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CONSTITUTIONAL DEVELOPMENTS IN FOREIGN COUNTRIES DURING 1908 AND 1909[1]

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Perhaps the two most important constitutional events during recent years are the establishment of the South African Union and the struggle in Great Britain over the budget and with reference to the powers of the House of Lords. Both of these events are excluded from treatment here—the South African Union is discussed somewhat fully in another part of this REVIEW; the British constitutional struggle is still in progress, and cannot be satisfactorily treated at the present time.[2]

However, with reference to the South African Union it may be well to call attention to the movement away from loosely-constructed federal states. In the United States the state governments have steadily tended to become of less importance

[1] This paper is merely a summary of important events, and is confessedly incomplete; in a number of cases it has been impossible to obtain the text of laws or proposed measures, and the discussion in such cases has necessarily been based upon accounts which have appeared in foreign magazines or newspapers. Volume 4 of the Jahrbuch des Oeffentlichen Rechts, which is not yet available to the writer of this paper, contains articles on the Hungarian electoral proposals, on the Saxon and Saxe-Weimar electoral reforms of 1909, and on the Bosnian constitution.

[2] See an article by Edward Porritt on *Recent and Pending Constitutional Changes in England*, in the May, 1910, number of this REVIEW.

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as compared with the national government, but this change has necessarily been produced not so much by textual changes in the constitution as by judicial interpretation. By the German imperial constitution of 1871 a fairly centralized federal organization was established, and since 1873 when the federal legislative power was extended over the whole field of civil law there have been no important extensions of federal power by textual changes in the constitution; but here as in the United States the federal power has increased at the expense of the states in a manner not shown by changes in the written instrument of government. "The most important and most weighty interests of the nation are common to all and must be cared for in a uniform manner, and all branches of public law and political life stand in a close and indissoluble relation the one to the other, so that by the logic of facts particularism must give place to unity, the common will must to an ever increasing extent displace the separate wills of the individual states."[3]

In Switzerland the movement toward a stronger federal government has been a steady one. The organization established in 1815 was a loose confederation of the cantons, and a real federal state was not constituted until 1848. A still further strengthening of the central government was brought about by the constitution of 1874, and amendments to that instrument have continued the same process. The most important amendments extending federal power in Switzerland are the one of 1897 placing the control of food products under the federal jurisdiction and two amendments of 1898 extending the federal legislative power over the fields of civil and criminal law. Two amendments adopted in 1908 still further augment federal power; one grants the federal government power to enact uniform regulations with respect to arts and trades, and another places the utilization of water power under the control of the

[3] Laband, *Die geschichtliche Entwicklung der Reichsverfassung*, Jahrbuch des œffentlichen Rechts der Gegenwart, i, 5. See also Leacock, *The Limitations of Federal Government*, Report of the American Political Science Association, 1908, p. 37; and Amidon, *The Nation and the Constitution*, Report of the American Bar Association, 1907, p. 463.

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confederation. A third amendment, also adopted in 1908, increases federal power to a certain extent over alcoholic liquors by prohibiting the manufacture or sale of absinthe and by placing power in the hands of the confederation to enforce this prohibition.[4]

In Mexico also there has been a tendency to decrease state powers as compared with those of the central government. An amendment of 1883 extended the federal legislative power over the whole fields of mining and commercial law, and amendments of 1896 and 1901 specifically reduced the power of the states in the matters of commerce and of contracting public debts. An amendment of June 20, 1908, extends federal legislative power over the waters within Mexican territory.

The people of South Africa, in constituting a unitary rather than a federal government, are thus acting in accordance with political experience, which shows that a federal organization is defective when a country faces grave problems requiring a uniform treatment throughout its whole territory. Mr. R. H. Brand in a recent book on South Africa says: "In Australia the narrow patriotism of the different states has imposed upon the Federal Government limitations which are generally admitted to be checking that country's advance. Federalism must be accepted where nothing better can be got, but its disadvantages are patent. It means division of power and consequent irritation and weakness in the organs of government, and it tends to stereotype and limit the development of a new country. South African statesmen have been wise to take advantage of the general sentiment in favor of a closer form of union. It is remarkable that South Africans have succeeded where almost all other unions have failed, in subordinating local to national feeling, and that the people of each colony should have been ready to merge the identity of their state, of whose history and tradi-

[4] For a summary of these amendments see this REVIEW, iii, 571. Proposals were introduced into the Swiss National Council in December, 1908, for the adoption of an amendment extending federal jurisdiction over automobile traffic and aërial navigation. The Federal Council in a report of March 22, 1910, recommended that such an amendment be submitted to the people.

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tions they are in every case intensely proud, in a wider national union, which is still but a name to them."[5]

During the past few years there has been an active movement which has had for its object the liberalizing of governmental organization, and which has had an important effect in widening the suffrage qualifications in a number of states. The liberal movement in Russia first began to exert an influence upon the government in August, 1905, when representative institutions were promised, and a law was issued under which it was proposed to hold elections for the Duma.[6] The election law of August 19, 1905, provided a restricted suffrage and for a class system of voting. This law did not satisfy the people, and an imperial manifesto of October 30, 1905, promised a wider suffrage and that the new Duma should have real legislative power. The election law of December 24, 1905, issued in fulfilment of this promise, went far toward establishing universal male suffrage; it gave some power in the elections to every important element of the population. The first and second Dumas were chosen under this liberal election law, and proved not to be subservient to the government. The second Duma was dissolved on June 16, 1907, and at the same time a new electoral law was issued which greatly restricted the suffrage, introduced a class system of electors and indirect voting, and placed the elections in the hands of those who were thought to be favorable to the government. This election law was issued by the emperor in direct violation of the provisions of the constitution granted on May 6, 1906, by the terms of which it was provided that "no new law shall be promulgated without the approval of the Council of the

[5] *The Union of South Africa*, 46-47. Keith, *Responsible Government in the Dominions*, p. 173, says: It should, however, be noted that already in the Commonwealth of Australia the friction between the state governments and the Commonwealth is giving rise to expressions of the desire to abolish the states as such and to create a great unified government.

[6] The movement in Russia may have had some effect in producing the Montenegrin Constitution of 1905, although reforms had been undertaken in this country before that date. There are now only a few small portions of territory in Europe where constitutions are not in force. In Monaco a constitutional movement recently began, and a commission was appointed in March, 1910, to draw up a constitution. See the Contemporary Review, April, 1910, p. 511.

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Empire and of the Imperial Duma." The third Duma, elected under the law of June 16, 1907, has proven a fairly tractable and conservative body.[7]

During the period of Russian reaction from 1899 to 1905 Finnish representative institutions practically disappeared, and an effort was made to assimilate the Finnish governmental organization to that of Russia. Finland possessed a Landtdag composed of four estates of the same type as the Swedish Riksdag before 1866; in 1809 when Finland passed from Sweden to Russia the Swedish institutions remained, and Finnish representative institutions were guaranteed by the Russian emperor; a law of 1869 provided that the Landtdag should meet once every five years. But, as has already been suggested, before 1905 Finland was rapidly being merged with the rest of the Russian empire, and seemed about to lose both her somewhat independent position and her representative institutions. But the liberal movement in Russia itself, together with the almost united opposition of the Finnish people to the Russification of their territory, brought in 1905 a change of attitude. On July 20, 1906, a new Landtdagsordning, framed by the Finnish Landtdag itself, was approved by the Russian emperor and became law. By this law the four estates were abolished and were replaced by a new landtdag or diet with a single chamber composed of two hundred members. For electing members of this diet universal suffrage was established for all males and females who had reached the age of twenty-four years, and every voter became eligible to the Landtdag. The Landtdag meets annually and its members are elected for three years upon a system of proportional representation. Despite the reaction in Russia itself these liberal institutions remain in Finland although legislation has recently been proposed in the Russian Duma which will practically destroy Finnish autonomy.[8]

[7] Samuel N. Harper, *The New Electoral Law for the Russian Duma* (Chicago, 1908). Pierre Chasles, *Le Parlement Russe* (Paris, 1909).

[8] The text of the law of July 20, 1906, may be found in Dareste, *Constitutions Modernes*, 3d. ed., ii, 204. See also Erich, *Ein Blick auf die neueste politische Gesetzgebung Finlands*, Jahrbuch des oeffentlichen Rechts der Gegenwart, ii, 431.

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The Austrian House of Representatives was before 1907 elected by a system of class representation, in which the property-owning and tax-paying classes had the greatest influence. Until 1896 only tax-paying citizens could vote, but in that year an additional class was established, in which universal male suffrage prevailed, and about one-sixth of the members of the House were elected by this class. This partial representation did not prove satisfactory, and after some little agitation an amendment to the fundamental law concerning imperial representation was passed which abolished the class system of voting and established universal male suffrage.[9]

The past three years have brought an enlargement of the suffrage in each of the three Scandinavian countries. Universal male suffrage did not prevail in Norway until 1898, and not until 1905 did the voters vote directly for members of the Storthing; before 1905 electors were chosen by the voters and these electors then met to choose their representatives in the national representative body. Long strides toward a more democratic government were made by the constitutional amendments of 1898 and 1905. A further constitutional change of June, 1907, extended the right to vote for members of the Storthing to women twenty-five years of age or over who themselves or whose husbands pay a tax upon an annual income of 400 kroner in cities or upon 300 kroner in the country. Before the adoption of this amendment women had the right to vote in communal elections under similar conditions. Under these provisions it is estimated that about 300,000 of the 550,000 Norwegian women above the age of twenty-five have the right to vote in national elections. The election of October and November, 1909, was the first general election in which women took part, and it is estimated that from 40 to 50 per cent of the qualified female voters cast their ballots in this election.[10]

[9] For a summary of the Austrian law see this REVIEW, ii, 56. See also Ulbrich in Jahrbuch des oeffentlichen Rechts, ii, 285.

[10] Flandin, *Institutions politiques de l'Europe Contemporaine*, iv, 440. Revue politique et parlementarie, vol. 63, p. 636. Constitutional amendments were adopted in Norway in 1908, one of which abolished the ceremony of coronation

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Constitutional alterations were adopted in 1909 which liberalize to a marked degree both houses of the Swedish Riksdag, and make some other important changes in the Swedish governmental organization. Members of the upper house continue to be indirectly elected by the provincial and municipal councils, but they serve hereafter for six rather than nine years, and the qualifications for membership in the upper house are materially reduced; whereas ownership of property worth 80,000 rixdollars or payment of a tax on an income of 4000 rixdollars was heretofore necessary, now a person to be eligible must own taxable property worth 50,000 rixdollars or pay a tax upon an annual income of 3000 rixdollars; the possession of a taxable income of less than $1000 is not a very burdensome qualification. Compensation is now paid to members of the upper house, whereas before 1909 they were unpaid.

All members of the lower house of the Swedish Riksdag are now elected directly, and universal male suffrage for all persons twenty-four years of age replaces a suffrage based upon property qualifications. Elections of members to both houses under the amendments of 1909 are by a system of proportional representation, in the districts where more than one member is to be chosen. These broad reforms place Swedish parliamentary institutions upon a really popular basis, but they did not satisfy the social democrats, who in the early part of 1909 brought in bills for the extension of the suffrage to all persons, both male and female, who had attained the age of twenty-one years, and for the purpose of decreasing the legislative power of the upper house.[11]

Under the constitution of 1866 the Danish Folkething is elected by universal male suffrage, but men must attain the age of thirty before exercising the right to vote. Until recently oral voting

and another withdrew from the king control over the sessions of the Storthing after that body had been in session for two months. The king had not, however, exercised control over such sessions since 1836. *Ibid.*, vol. 59, p. 624.

[11] The Swedish amendments of 1909 also provided for a council of legislation which should advise the king with reference to his action upon all laws passed by the Riksdag. The texts of the revised Swedish constitution and Riksdagsordning may be found in Dareste, *Constitutions Modernes*, 3d. ed., ii, 46-114. See also Flandin, iv, 330-333.

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prevailed, but in 1901 the secret ballot was introduced. The Landsthing, however, is composed of 66 members, of whom 12 are appointed by the king, and the other 54 indirectly elected by local electoral colleges. In the election of these local colleges the higher taxpayers have had the choice of one-half of the members, and in the country districts a number of large taxpayers have had authority to form part of these local colleges without election. A somewhat similar dominance was given to the larger taxpayers in the election of municipal and communal councils. The law relating to communal elections, which came into effect in April, 1908, while it does not affect in any way elections to the two houses of the Rigsdag, extends very materially the suffrage in local elections. The special voting privileges of larger taxpayers have disappeared. The suffrage is conferred upon both males and females who have attained the age of twenty-five years. By this law the number of persons qualified to vote in local elections has been about doubled.[12]

Having discussed briefly the successful reforms of election laws during recent years it may now be well to refer to some projects which have not yet been embodied in the form of law. In France a vigorous agitation has been going on for several years in favor of proportional representation, the proposed introduction of this system necessarily involving the substitution of the *scrutin de liste* for the *scrutin d'arrondissement*. An important report upon this subject was drawn up in 1906 by M. Charles Benoist,[13] and in October, 1909, the matter came to a vote in the chamber of deputies. Votes were taken favorable to the *scrutin de liste* and to proportional representation, but no further action was taken because the government, while admitting the need for reform, declined to commit itself to any program of electoral change which should be adopted before the next general election. In the election which took place in April and May, 1910, proportional representation was before the people, and

[12] Flandin, iv, 216-228, 244. La vie politique dans les deux mondes, i, 237, ii, 233. Revue politique et parlementaire, vol. 58, pp. 411, 412. Questions diplomatiques et coloniales, vol. 27, p. 473.

[13] Documents parlementaires, Chambre des députés, vol. 71, p. 890.

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a majority of the deputies chosen is in favor of the change. M. Briand, the French Prime Minister, has drawn up a plan of electoral reform which will be supported by the government. This plan includes; (1) The reëstablishment of the *scrutin de liste*. (2) Proportional representation. (3) The election of deputies for six rather than four years, with one-third of the members to be chosen each two years, instead of the total renewal of the chamber at one election. This third proposal, however, will probably not be pushed by the government should it encounter much opposition.

In 1900 the people of Switzerland rejected a proposed amendment which would have introduced proportional representation for the election of members to the National Council, but the proposal of 1900 was combined with one for the popular election of members of the Federal Council, and this in part was the cause of its rejection. An amendment proposed by initiative petition in 1909 has for its purpose the one object of introducing proportional representation for the election of the National Council. The Federal Council reported upon this proposal on February 25, 1910; it proposed that the project be submitted to the people with a recommendation that it be rejected. The proposed amendment will probably be voted upon in 1910, and the result of such a vote is doubtful, as the measure is being vigorously opposed. In the Netherlands also there has been some consideration of the subject of proportional representation. A commission was appointed in 1905 to consider the subject of constitutional revision, and this commission in its report made in 1907, recommended, among other things, the introduction of proportional representation and the extension of political rights to women; no action has been taken upon the basis of this report, however. Though there seems little prospect of either proportional representation or the referendum being adopted in England in the near future, yet there is some slight tendency toward these institutions. Mr. A. V. Dicey has for many years championed the referendum, and there is a fairly large part of the Conservative party advocating the same measure as a means of breaking

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deadlocks between the Lords and Commons.[14] A royal commission appointed in 1908 has recently rendered a valuable report in which it recommends the adoption of proportional representation.[15]

But perhaps the most interesting struggles for electoral reform in recent years are those in Hungary and in Germany. At present the right to vote in Hungary is based upon a complicated system of property, tax-paying, or educational qualifications, and the whole system is nicely adjusted so as to maintain Magyar supremacy. In the Hungarian House of Representatives there were, excluding the Croatian members, but twenty-six non-Magyars out of four hundred and thirteen members in 1909; yet less than half the population is Magyar. The Magyars are in control of the governmental machinery and any proposal for equal and universal suffrage is opposed because it would almost necessarily destroy Magyar supremacy. An agreement reached between the "Coalition" and the emperor-king in 1906 contained a definite agreement that the "coalition" ministry would introduce universal suffrage, and by this agreement it seems to have been intended that a suffrage reform should be brought about which would give the non-Magyars a real influence in the government.

But the agreement was interpreted by the Magyar ministry to require universal but not necessarily equal suffrage. There was much delay before any bill was introduced, and the measure finally submitted in November, 1908, was so drawn as, in the words of its author, Count Andrassy, "not to compromise the Magyar character of the Hungarian state." This end was to be attained by plural voting, and by requiring that the vote be public and oral.

All male Hungarian subjects twenty-four years of age[16] knowing how to read and write *in Hungarian* were to have one vote.

[14] See A. V. Dicey, *The Referendum and its Critics*, Quarterly Review, April, 1910.

[15] Report of the Royal Commission appointed to inquire into electoral systems. (London, 1910, p. 63.)

[16] The present age is twenty years.

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Those not knowing how to read and write *in Hungarian* were to have but one-tenth of a vote, every ten of them choosing an elector who should cast this vote. Thus those who do not know the Magyar language are reduced to the same level as illiterate Magyars, and would have almost no weight in the elections. Those paying twenty crowns of direct taxes or having completed one-half of the course of secondary instruction were to have two votes, as also those over thirty-two years of age who have served in the army and are parents of three legitimate children, or persons who have worked for five years with the same employer. Those who have completed their course of secondary instrution, or who pay a direct tax of at least one hundred crowns were to have three votes.

"About two hundred thousand persons possess three votes because they pay a direct tax to the state of at least one hundred crowns, or have passed their "baccalaureat" as they say in France; eight hundred and sixty thousand citizens have two votes, it may be because they pay a tax of twenty crowns, or because they have had a certain instruction or a certain position, or because they are fathers of three children. Finally 1,530,000 individuals have only one vote; they are all of the other adult males who are not illiterates. There remain 1,270,000 Hungarians who do not know how to read and write; to these are given a tenth of a vote and their vote is indirect; that is, each group of ten names an elector who has a vote at the polls. By this system the Hungarian populations are divided into four categories: the two first which represent the well-to-do and educated classes, have 2,385,000 votes, cast by 1,083,000 persons; the two second, which constitute the proletarian classes, have 1,661,000 votes, cast by 2,805,000 citizens."[17]

These proposals would give universal but not equal suffrage and would more than double the number of persons taking part in the elections, but they leave the control of affairs just where

[17] Gabriel Louis-Jaray in Questions diplomatiques et coloniales, vol. 27, p. 227. See also M. Jaray's valuable work, *La Question sociale et le socialisme en Hongrie*, and La vie politique dans les deux mondes, iii, 191.

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it was before and as reforms of the present situation were merely illusory. By classing together the Magyar proletarians and the non-Magyar nationalities the ministry forced a combination of these elements against its measure, and the struggle necessarily widened out from one simply between the Magyar and non-Magyar elements of the population. The bill was not only so drawn as to leave control in the hands of those who now have it, but the system of oral voting would have made it possible to exert pressure upon the lower classes of voters.

Since the introduction of this measure in 1908 Hungarian affairs have been in a state of almost constant turmoil over the creation of an independent Hungarian bank and over other questions concerning Austro-Hungarian relations. Suffrage reform fell into the background. The Hedervary ministry which came into power in the spring of 1910, and which obtained a majority of the House of Representatives in the elections of June, 1910, is committed both to suffrage reform and to a more conciliatory policy with reference to Austro-Hungarian relations; some measure of suffrage reform may be expected within the year, but the reforms will probably not introduce universal and equal suffrage but will amost certainly be of such a type as "not to compromise the Magyar character of the Hungarian state."

In Germany during the past few years there has been an almost steady movement toward more liberal institutions. The subject of ministerial responsibility in the imperial government has been discussed somewhat fully in the Reichstag during the past two years, and the ministerial crisis of 1908 and the final resignation of Chancellor von Bülow in 1909 gave an added impetus to discussions of this subject. However, there is little possibility of the establishment of the principle of ministerial responsibility, because of the character of the imperial organization and of the close relations between the governments of Prussia and of the Empire. Another question of imperial policy which has presented itself forcibly during recent months is that as to the government of Alsace-Lorraine. For several years promises of some constitutional reform in this respect have been made, and agitations during the early months of 1910 have forced the imperial

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government to make the statement that it would in the near future bring forward proposals granting a greater share of autonomy to Alsace-Lorraine.[18]

However, it is not in the Empire but in the German states that the most vigorous liberal movement has been in progress. In many of the states the suffrage and electoral methods have been very antiquated. Important electoral reforms were made in Baden in 1904. The first chamber of the Landtag was liberalized by the introduction of members chosen by the commercial and communal institutions; for the second chamber universal male suffrage has prevailed since 1869, but before 1904 the elections were indirect; the voters chose electors who in turn elected members of the chamber; direct elections were introduced in 1904.[19] Reforms were introduced in Wurtemburg in 1906 which liberalized the institutions of that state. The upper house of the legislature retains its conservative character, although some elected members have been added; for the lower house seventy of the ninety-three members had since 1868 been elected by universal and direct male suffrage, but in 1906 all members became so elected; of the ninety-two members who now form the lower house sixty-nine are elected from single districts, and the remaining twenty-three are elected from larger districts under a system of proportional representation.[20]

By a law of 1882 the class system of voting in Bavaria was replaced by an equal suffrage extended to all persons paying a direct tax, but indirect elections were retained; in 1906 direct were substituted for indirect elections, but the tax qualification for the exercise of the suffrage remains.[21] Proportional repre-

[18] See Pierre Braun, *Alsace-Lorraine. Les préludes d'une lutte nationale.* Questions diplomatiques et coloniales, April 16, 1910.

[19] The text of the constitution of Baden may be found in Dareste, i, 314. See also E. Walz, *Die badische Verfassungsreform des Jahres 1904*, Jahrbuch des oeffentlichen Rechts der Gegenwart, i, 317.

[20] Dareste, i, 275. Göz, *Verfassungsrevision und Verwaltungsreform in Württemberg*, Jahrbuch des oeffentlichen Rechts, i, 255. Fontaine, *La Représentation proportionelle en Wurtemberg* (Paris, 1909).

[21] Grassmann, *Die bayerische Landtagswahlgesetz vom 8. April, 1906.* Jahrbuch des oeffentlichen Rechts, i, 242.

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sentation for Bavarian municipal elections was introduced by a law of August 15, 1908.[22]

The new election law adopted by Hamburg on March 5, 1906, is of interest because of its introduction of proportional representation. Qualifications based upon property, position, or the payment of taxes have been strengthened, and the electoral system remains one in which the higher classes exercise a dominating influence in the Bürgerschaft.[23] Oldenburg by a law of April 17, 1909, substituted universal male suffrage and direct voting for indirect voting and a suffrage based on a tax qualification.[24] A new electoral law for Saxe-Weimar, adopted April 10, 1909, substitutes the direct for the indirect system of voting, and although it does not increase the number of members of the Landtag elected by universal suffrage would seem not to have weakened popular control by the addition of five members who will be chosen by the university, and by industrial and agricultural organizations.[25] In Saxe-Altenburg also there was enacted a new suffrage law in 1909, but practically no change was made in the method of electing members to the Landtag; nine of the thirty-two members are elected by the highest taxpayers, and the remainder are elected by taxpayers under a three-class system similar to that employed in Prussia.[26] The two Mecklenburgs remain the only German states which do not possess elected representative bodies; the representative institutions of these states are a survival from mediæval times; the Grand Duke in 1907 initiated a movement for constitutional reform, and a proposed constitution drafted in 1908 provided for the establishment of a Landtag, whose members should be chosen partly by the landed, industrial, official and professional

[22] Robert Piloty in Jahrbuch des oeffentlichen Rechts, iii, 478.

[23] Geert Seelig in Jahrbuch des oeffentlichen Rechts, ii, 132.

[24] Posener, *Staatsverfassungen des Erdballs*, 306.

[25] Posener, *Staatsverfassungen des Erdballs*, 395. *Deutsche Geschichtskalender*, 1909, i, 230. Combes de Lestrade, *Les Monarchies de l'empire allemande*, 184.

[26] Posener, 451. In Schaumburg-Lippe a new election law was adopted in 1906, but it appears to have made no essential change in the representative system. New electoral proposals were submitted in Hesse-Darmstadt in 1909.

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classes, and partly by universal suffrage; these proposals were rejected by the Ritterschaft during the latter part of 1909.[27]

Although the movement toward electoral reform has been a rather general one throughout Germany, the most interesting developments have been those in Saxony and Prussia. Before 1896 Saxony had a general suffrage based on a small tax qualification, and members of the second chamber of the Landtag were chosen by direct secret ballot. The fear of the socialists caused a complete change in this system in 1896. Indirect elections with public voting were introduced; the tax qualification was continued, and a three-class system of voting was adopted which gave to the larger taxpayers control of the elections, although not to as great an extent as the similar system employed in Prussia. A proposed reform of this system was presented in 1907 which should extend the suffrage but leave the effectual control of elections in the hands of the higher classes. The election law passed on May 5, 1909, re-introduced direct and secret voting, and provided: (1) that male persons twenty-five years of age paying direct taxes should have one vote; (2) those owning two hectares of land, or paying a tax upon an annual income of 1250, 1400 or 1600 marks, according respectively as such income is drawn from land, public office, or from general sources, and those who have passed certain examinations, have two votes each; (3) those paying annual taxes as above upon an income of 1600, 1900 or 2200 marks, or who possess four hectares of land, or who as teacher, engineer, artist, or writer earn an income of 1900 marks, have three votes each; (4) those paying an annual tax as above upon an income of 2200, 2500 or 2800 marks, or who own eight hectares of land have four votes each. Every man belonging to the first, second, or third class is given an additional vote upon reaching the age of fifty years. No person has more than four votes. In October, 1909, the first elections were held under this law, and the socialists

[27] Lowell, *Governments and Parties in Continental Europe*, i, 364. Brückner, *Bericht über die mecklenburgischen Verfassungsvorlagen*, Jahrbuch des oeffentlichen Rechts, iii, 493.

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instead of being held in check by its provisions gained twenty-five seats in the Landtag, or nearly one-third of the second chamber, whereas they had before had only one member.[28] This success emboldened the socialists to such an extent that in the early part of 1910 they brought forward a project to reform and liberalize the first chamber, which is now composed entirely of persons who sit by virtue of hereditary right, property, position, or royal appointment.

In Prussia for the election of members to the House of Representatives the three-class system of voting prevails, together with indirect elections and oral voting. "The system at present in force is briefly as follows: The total taxation assessment of the electoral district is divided into three equal parts. The names of all who pay direct taxes in the district are drawn up on a roll in the order of their assessment. Beginning at the top of the list so many of the voters as make up between them one-third of the total assessment form the first class. The second class consists of a greater number of less wealthy voters, determined on the same principle, while the third class is made up of the remainder of the electors. Each class elects an equal number of secondary voters, who together form an electoral college and in their turn elect the deputy. Thus each class has through the secondary electors an equal share in the ultimate choice of their representative. But in consequence of the system by which the number of voters in each class is determined, the first and second classes consist of a comparatively few wealthy electors—in 2,214 districts the first class consists of a single individual and in 1,703 districts of two. Yet the two classes combined can always outvote the great mass of the people, who make up the third class."[29] It is estimated that in 1907 about three per cent of the Prussian electorate belonged to the first class, about 9.5 per cent to the second class, and about 87.5 per cent to the third

[28] Lowell, I, 336. Combes de Lestrade, 176. Annual Register, 1909, pp. 307, 308. Revue politique et parlementaire, vol. 63, p. 206. Upon the whole subject of property qualifications for voting see a valuable article by Georg Schmidt, *Der Wahlzensus*, in the Archiv für oeffentliches Rechts, (1910), pp. 193, 254.

[29] London Times, Feb. 10, 1910.

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class. The indirect elections enable the first and second classes, by virtue of the smallness of their number to exercise a greater control over elections than they might otherwise have, and oral voting makes it possible to bring pressure to bear upon members of the lower classes. Furthermore there has been no general redistribution of seats in the House of Representatives since 1860, although a partial reapportionment was made in 1906; the great cities which have sprung up within the past fifty years are grossly under-represented, and the cities form the stronghold of social democracy.[30] The socialists in 1903 cast about 40 per cent of the total vote in imperial elections and obtained eighty members in the Reichstag, but at elections in the same year they obtained no seats in the Prussian Landtag. In the elections of 1908 the socialists obtained seven members, their first representation in the Landtag.

The Prussian electoral system has for years been the object of vigorous attacks, but a majority of the lower house of the Landtag has always been obtained against any reform, inasmuch as the present system operates in favor of the conservatives, national liberals, and of all the agrarian interests. The socialists favor universal suffrage with direct and secret voting. After delaying the matter as long as possible the Prussian government presented proposals of reform in February, 1910, which it was hoped would receive the support of all non-socialist parties. Demands for a secret ballot and for a redistribution of seats in the interest of the larger cities were not met, but it was proposed to substitute direct for indirect voting. The three-class system was to be continued, but the first class was to be enlarged, and the influence of richer taxpayers reduced by declining to give weight to any payment of taxes in excess of five thousand marks. The first and second classes would be enlarged also by admitting to them certain official and professional classes. Persons who have completed a course of higher education, who are members

[30] The same statement is true as to representation in the German Reichstag, no apportionment having been made since the organization of the Empire. But in the Empire universal male suffrage prevails, and elections are both direct and secret.

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of the Reichstag or of the Landtag, hold honorary offices in the local government, and officers in the army and navy should belong to the second class, or to the first class if their tax payments already entitled them to membership in the second class. Lesser officials were to be promoted from the third to the second class; persons who had completed the course of secondary instruction or had performed their military service with credit were to become members of the second class if they possessed a certain minimum income.[31]

This bill was passed by the lower house after a compromise which substituted the secret ballot with indirect voting for direct elections with oral voting. The bill was then adopted by the upper house with amendments approved by the government which would have enlarged the voting areas and would on this account have still further reduced the influence of the richer voters. The bill, however, even as amended left the richer classes in control and even strengthened the position of the officials. It was found impossible to combine all non-socialist parties in support of these proposals, and in the face of peaceful but impressive demonstrations by the socialists the suffrage bill was withdrawn by the government on May 27, 1910.[32]

The liberal movement has not been confined to Western Europe, but has extended also to Egypt, Turkey, Russia, India and China. In Egypt no changes in governmental organization have been effected within the past two years, but the agitation of the Nationalist party has steadily increased, although it cannot yet be said that this party represents the views of any large body of the Egyptian natives.[33]

In Turkey the revolutionary movement forced the Sultan in July, 1908, to restore the constitution of 1876; an election law

[31] The proposal resembles in many respects the Saxon threec-lass system of 1896.

[32] Henry Nézard, *Le Suffrage politique en Prusse*, Revue politique et parlementaire, vol. 56, p. 532. See also a review of recent German politics in the same journal, vol. 63, p. 204.

[33] Egyptian governmental affairs may be conveniently followed in the annual reports for 1908 and 1909 made by the British agent and consul general on the finances, administration, and condition of Egypt and the Sudan.

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was issued establishing indirect elections, a vote being given to practically all adult male Turks who paid direct taxes, but the Turkish population was favored at the expense of other nationalities; the Ottoman parliament met in December, 1908. A reactionary movement in the spring of 1909 threatened the existence of the constitution, but the liberal forces regained control; Abdul Hamid was deposed on April 27, 1909, and his brother became Sultan as Mahommed V. In 1909 a revision of the constitution was undertaken by the Turkish parliament, and the revised constitution went into effect on August 18, 1909. The constitution of 1876 established parliamentary government with ministerial responsibility, and no essential change is made by the amendments of 1909; the revised constitution strengthens parliamentary institutions and imposes some additional guaranties with reference to individual rights.[34]

The Persian constitutional movement like the Turkish has caused the deposition of a ruler, and has resulted in several constitutional documents. Popular agitation forced the Shah on August 5, 1906, to issue a royal proclamation promising to convene a representative parliament and to reform the governmental institutions, and an election law issued on September 9, 1906, provided for the choice of a national assembly by the people, the elections being conducted with a class system of voting, and the qualifications being such that the great body of the population should have little influence. The National Assembly when it met immediately took into consideration the draft of a constitution, and the Fundamental Law went into effect on December 30, 1906. This law regulates the organization and powers of the Assembly, and provides for the establishment of a senate which should form a branch of the legislature. In January, 1907, the Shah died; his son and successor

[34] The text of the constitution of 1876 may be found in French translation in the Revue du droit public et de la science politique, vol. 25, p. 532; the constitution as revised in 1909 is in Dareste, ii, 323. The movement in Turkey may be conveniently followed in the Annual Register and in the annual volumes of La vie politique dans les deux mondes. See also E. F. Knight, *The Awakening of Turkey* (London, 1909), and an article by Edwin Pears in the Contemporary Review, June, 1910.

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swore to support the constitution and was forced on October 7, 1907, to consent to supplementary fundamental laws which explicitly established ministerial responsibility and contained among other things, guaranties of individual rights.[35] The new Shah, Mahommed Ali, was a reactionary, and in June, 1908, a definite breach took place between him and the Assembly. War followed; the Shah's cause finally suffered defeat, and the Shah took refuge in the Russian legation in July, 1909; he was succeeded by his eleven-year old son. Before his deposition Mahommed Ali restored the constitution, and on July 1, 1909, a new electoral law was promulgated, under the terms of which a new Assembly was to be elected as soon as possible. The constitutional régime began again with the accession of the young Shah; parliamentary institutions were re-established with the meeting of the new Assembly on November 15, 1909, and are still in existence, though it cannot be said that parliamentary government in Persia has yet proven very successful.[36]

In 1908 there was published a program of constitutional reform for China, the proposed reforms to cover a period of nine years, and to culminate in 1916 and 1917 with a constitution and the first session of an elected parliament. This program of constitutional reform and the steps already taken toward its fulfilment have been so well treated in a recent paper by Dr. Asakawa that it will be unnecessary to discuss the matter in detail here.[37] The program of proposed reforms continues to be carried out, at least on paper. An imperial decree of May 9, 1910, designated the members to serve in the senate or imperial assembly the first session of which is to be held on October 3 of this year. This body, unlike the provincial assemblies, is to be composed

[35] All of the documents referred to above may be found in English translation in Edward G. Browne's *Brief Narrative of Recent Events in Persia.* (London, 1909).

[36] Kitabgi Khan, *La Perse constitutionnelle*, Revue politique et parlementaire, vol. 63, p. 347. Events in Persia from December 1906 to December 1909, may be followed in the British Blue Books, Persia, Nos. 1 and 2 (1909), and Persia, No. 1 (1910). The text of the new election law may be found in Persia, No. 1 (1910), p. 73.

[37] *The New Régime in China*, Proceedings of the American Political Science Association, 1909, p. 123. As to the work of the first provincial assemblies see a very favorable account in the London Times, Jan. 20, p. 5.

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of members all of whom are chosen by the government, from among the nobility, officers, and scholars. It remains to be seen to what extent this body will serve its purpose as the foundation for the later establishment of an elected parliament.[38]

For some years there has been an agitation in India looking toward a greater popular participation in the government. The agitation against the British administration was accentuated by the discontent occasioned upon the partition of Bengal in 1905. It was necessary to make some concession to allay the growing discontent. An act was passed by the British parliament in 1909 introducing elected members into the legislative councils of the governor-general and of the several provinces. The act permitted an increase of the powers of these councils, and so enlarged their membership as to make then legislative bodies of a deliberative character. The law also permits the creation of provincial executive councils by the governor-general of India, in provinces where such councils do not already exist, provided that the matter be first submitted to both houses of Parliament, and neither house takes action against it.[39] It is proposed that such councils should contain some native members. The Indian Councils Act was but an outline, and left the determination as to the number of elected members and as to the method of their election to be controlled by regulations made by the governor-general of India, acting of course with the approval of the secretary of state for India. Inasmuch as separate regulations were necessary for the governor-general's council and for each of the provinces, the regulations for the execution of this law not unnaturally fill a blue book of several hundred pages.[40] In all councils a majority of the members are appointed; in the governor-general's council a majority are officials, but the non-official element predominates in the provincial councils. The governor-

[38] North-China Herald, May 13, 1910, pp. 360, 395.

[39] Indian Councils Act, 9 Edw. VII, ch. 4. A summary of this act may be found in this REVIEW, iii, 552. For the situation in India see Henry W. Nevinson's *The New Spirit in India* (London, 1908).

[40] These regulations may be found summarized in the Annual Register for 1909, pp. 382-387.

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general's council contains representatives of the several provinces and of certain chambers of commerce, land-holding bodies, Mohammedan communities, etc. The representation in both the governor-general's council, and in the provincial councils is necessarily, because of the organization of Indian society, in the main a representation of interests and classes rather than one based on any system of general suffrage. The first meetings of these enlarged and liberalized councils were held in the early part of the year 1910.[41]

The annexation of the Congo Independent State to Belgium was consummated on October 18, 1908. The administration is under the supervision of a colonial minister who is responsible to the Belgian chamber.[42]

For some years there has been an agitation upon the part of Iceland for a change in its relations toward Denmark. Under a law of 1874 which was modified in 1903 Iceland has an elected assembly, a minority of whose upper house is appointed by the king, and a responsible ministry, but still further autonomy is desired. A commission appointed in 1907 and composed of Danish and Icelandic members, proposed in 1908 a plan of personal union which is somewhat similar to the arrangement between Austria and Hungary. The king would assume the title of King of Denmark and Iceland; national defense and foreign affairs should be administered in common, but otherwise the two parts of the kingdom would be practically independent of each other, though having the same ruler. It was proposed that this agreement should continue for twenty-five years, after which negotiations might be undertaken for a readjustment of relations between the two territories. This compromise was rejected by the Icelandic Althing in February, 1909, and a minis-

[41] For a review of the work of the governor-general's council see the London Times, April 18, 1910, p. 7. See also an interesting article by Ameer Ali on *The Constitutional Experiment in India*, in the Nineteenth Century, March, 1910.

[42] A full account of the annexation of the Congo may be found in an article by Paul Errera, *Le Congo belge*, Revue du droit public et de la science politique, xxv, 730. The texts may be conveniently found in Dareste, i, 98-105, and in Errera, *Droit public belge*, 773-783.

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try came into power which was committed to a more independent position for Iceland.[43]

Finland, unfortunately, is in a much less satisfactory strategic position with reference to Russia than is Iceland in its relations to Denmark. Finland has nominally enjoyed autonomy since its annexation to the Russian Empire in 1809, but from 1899 to 1905 a vigorous effort was made to assimilate Finnish institutions to those of other parts of the empire. A change of policy was forced in 1905 by the united opposition of the Finnish people, but the change was merely temporary; during the past two years the autonomy of Finland has been practically ignored with reference to questions which are assumed to affect the whole empire. A bill laid before the Russian Duma late in March, 1910, and which will probably have become law before this paper is in print, practically destroys Finnish autonomy. The Finnish Diet remains and will have legislative power with respect to matters which concern Finland exclusively; all laws which do not relate purely to Finland are to be passed by the Russian Duma and Imperial Council. The bill itself enumerates the subjects which are withdrawn from consideration by the Finnish Diet, and this enumeration covers practically the whole domain of internal administration. Furthermore it is provided that the fundamental principles concerning the internal administration may be altered by the imperial legislature. One member of the Imperial Council and five members of the Duma are to be elected by the Finnish Diet. The military and financial administration, the rights of association and assembly, the control of the press, and a number of other matters are to be made uniform throughout the empire. The form of representative government will remain in Finland but its substance will have disappeared.[44]

[43] Dareste, ii, 26, has the constitutional law now in force in Iceland. See Bredo Morgenstierne, *Die dänish-isländische Staatsverbindung*, Jahrbuch des oeffentlichen Rechts, iii, 520.

[44] E. J. Dillon in Contemporary Review, May, 1910. Questions diplomatiques et coloniales, April 16, 1910. London Times, March 30, 1910. An interesting pronouncement by notable foreign jurists in favor of Finnish autonomy may be found in the London Times, March 2, 1910.

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The annexation of Bosnia and Herzegovina to Austria-Hungary gave rise to questions which were in the main of a diplomatic character, but the annexation also made necessary new regulations for the government of the annexed territory. Fundamental statutes promulgated on February 22, 1910, establish a diet for Bosnia-Herzegovina, and contain guaranties of private rights. Seats in the diet are distributed primarily according to religions; universal suffrage is established, but elections are based on a class system of (1) landed proprietors and higher taxpayers, (2) urban electors, (3) rural voters.[45]

In the Netherlands and in Greece constitutional changes may perhaps be expected in the near future. A commission to consider the question of constitutional revision was appointed in the Netherlands in 1905, but its report which was made in 1907 resulted in no action; another commission was appointed in March, 1910. In Greece governmental affairs during the past year have been in a state of constant turmoil, and the real control of affairs has been in the hands of the Military League. The political institutions have been in part blamed for the condition of the country, and it has been decided to convene a national assembly to revise the constitution. A program of reform drawn up by Professor Saripolas in February, 1910, involves changes with respect to the organization, election, and powers of the chamber of deputies, and the creation of a council of state which should exercise some of the powers of a second legislative chamber.[46]

Venezuela in August, 1909, adopted a new constitution, which replaces that of 1904. This country thus maintains its record of frequent constitutional changes. The new constitution makes slight changes in the method of electing the president and shortens his term of office from six to four years, erects several new states, changes the apportionment of members of the chamber of deputies, shortens the term of members of the chamber from six to four years, and slightly enlarges the power of the federal govern-

[45] A full summary of this instrument may be found in the London Times, Feb. 23, 1910.

[46] See an article entitled *Greece and King George*, in the Quarterly Review, April, 1910.

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ment.[47] A new constitution for the Dominican Republic was adopted in 1908. In the same year Colombia adopted laws and constitutional amendments altering the political divisions of the country, making changes in the composition of the senate, and amending the election law; a constitutional convention was assembled in May, 1910, for the purpose of further revising the Colombian constitution.

Not all important constitutional changes are embodied in the form of laws. One of the most important developments in the past few years has been the adoption by the Australian High Court of the whole doctrine of judicial control over federal legislation, a doctrine borrowed from the United States. The court early in its history had made statements which indicated that it would adopt this doctrine and later decisions have set at rest any doubt as to its attitude.[48] Professor Harrison Moore advocates the complete adoption of the American principle by the Australian Court.[49] The principle of judicial control over legislation is one which with us is now the object of vigorous criticism, and it will be interesting to note how it will work in Australia. However, the Australian constitution contains no broad guaranties of individual rights which would give the court discretionary control over legislation, and the judicial control there must necessarily be confined to narrow limits, as compared with that in the United States.

[47] Summaries of the new constitution may be found in the Bulletin of the International Union of the American Republics, Sept. 1909, p. 648, and Dec. 1909, p. 1152.

[48] See Attorney-General v. Brewery Employes' Union, 6 C. L. R. (1908), 469.

[49] *Unconstitutional Legislation*, Commonwealth Law Review, iv, 201.

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FINLAND

The war between Russia and Sweden culminating in the treaty of Fredrikshamn in 1809 decided the fate of Finland; according to the terms of the treaty Sweden ceded to Russia her Finnish provinces. Article VI of the treaty states, however, that Russia guaranteed Finland her laws and privileges.[1] It is this latter clause, which at the present day is the bone of contention in the Finnish question.

The campaign of the Russian army corps in Finland was very far from being a decisive one; the progress was slow, the resistance of the enemy strong; finally, the Finns started a guerilla war against the Russians, causing the latter very great annoyance.

At the same time the Russian government had many other troubles on hand. The figure of Napoleon loomed high on the horizon of Europe and his shadow began to fall on Russia too, causing the Tsar Alexander I much anxiety.

All this was a strong inducement for Alexander to settle the Finnish question as soon and as peacefully as he could.

All through the year 1808 the Russians pursued a wavering policy; first they would threaten the Finns, then make them certain promises or concessions and so on; thus for example, two important manifestos were issued on March 28 and 31, 1808. In the first one the Russian government declared that thereafter Finland was for all time united with the Russian empire and that the Finns had consequently to take the oath of allegi-

[1] The text of Article VI is as follows: "Sa Majesté l'Empereur de toutes les Russies ayant donné déjà les preuves les plus manifestes de la clémence et de la justice avec lesquelles Sa Majesté a résolu de gouverner les habitants des pays qu'elle vient d'acquérir, en les assurant généreusement et d'un mouvement spontané du libre exercise de leur religion, de leurs droits de propriété et de leurs privilèges," etc.

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ance to the Tsar; in the second one the government promised not to levy recruits in Finland and to restore the Finnish army as soon as the oath should be taken. It proved, however, very difficult to force the Finns to take the oath; violent measures were used by the Russians in different places, and yet the majority of Finns literally took to the woods and could not be found.

The entire population was hostile to the invading army and that of course made the position of the commanding generals a very difficult one. They naturally wished for peace and in the autumn months of 1808 a number of armistices were concluded, and a lasting agreement finally reached on November 19, according to the terms of which the Finnish army agreed to withdraw back of the Kemi River.

Then came the unexpected event of the palace revolution in Stockholm. On March 13, 1809, the king of Sweden, Gustavus-Adolphus, was dethroned, the new Swedish government at once accepting Russia's proposals for a peace conference. The latter met at Fredrikshamn; hence the name of the above mentioned treaty, according to which Finland was ceded to Russia.

Meanwhile since the winter of 1808–1809 the Russians considered themselves the conquerors of Finland.

The upper classes of the Finns, the nobility, gentry and clergy, clearly saw the profits they could reap from a union with Russia, and hoped for much more independence than they formerly had under Swedish rule; only the lower classes, especially the peasantry, were opposed to the Russians. Many members of the Finnish aristocracy had come into personal contact with the Russian emperor and had been charmed by his fascinating personality; for Alexander well knew how to make himself agreeable and easily won many devoted friends. Moreover, his acts were consciously directed to capturing the confidence of the Finns. In the summer of 1808 he called a deputation to St. Petersburg, to discuss the settlement of Finnish affairs. An imperial manifesto was issued urging the people to elect such a "deputation." This order was duly obeyed; the Finns, however, foresaw one danger, viz., that the Russian government would consider the members of this deputation representatives of the people

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and in the future might refuse to convene the Finnish diet, or Finnish estates, and merely continue to summon similar deputations to St. Petersburg. Hearing rumors of these fears, Alexander immediately sent assurances to the Finns that he had no such intention. The deputation consequently went to the Russian capital at the end of the year (1808); its main object being to defend the maintenance of the existing laws and privileges of Finland, and to arrange a settlement of the various questions which had arisen in consequence of the war.

On the first of December Alexander appointed General Sprengtporten governor-general of Finland; this fact is of importance to us, as showing that Russia then looked upon Finland as a conquered province. She had the right of doing so from a military point of view; part of the Swedish army had been defeated, and the remainder driven into the far north. Consequently the greater part of the Finnish territory was under Russian military occupation, though a guerilla war was still going on in some places.

Now came the decisive act of the Russian government; the new governor-general submitted to the tsar a report, concerning the administrative organization of the newly conquered provinces; the most important question mentioned in this report being the summoning of "an assembly which should be composed of representatives of all the classes of the population." According to Alexander's personal wish, the Finnish affairs were to be reported to him directly by a "secretary of state for Finland" and not through any Russian office. From the very beginning two main points were thus established, with the sanction of the tsar: 1. Finland was to have a legislative representative assembly, distinct from the legislative organs of the Russian Empire. 2. All Finnish affairs were to be conducted exclusively by Finnish officials, Finland thus receiving a separate administration; the secretary of state had merely the duty of submitting reports and possessed no executive or administrative power, being simply the official channel of communication between the tsar and the Finnish government.

The diet or landtag was summoned by an imperial order to

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convene on March 22, 1809, at the town of Borgo. It was to consist of four "estates" or chambers, the nobility, the clergy, the burgesses and the peasants.[1] Alexander went himself to Borgo to be present at the opening ceremonies. On the twenty-eighth the governor-general read the tsar's speech from the throne. Alexander promised to recognize the Finnish constitution and laws, saying: "The present assembly, as proof of my promise, will be the beginning of your political existence." The diet then took the oath of allegiance and officially recognized Alexander as the "grand duke of Finland."

The first secretary of state for Finland was Speranski. This is a very important fact to note, considering Speranski's influence on Alexander at this time. He was the greatest statesman Russia had in the nineteenth century, and in 1809 the staunchest supporter of liberal and even constitutional ideas; and much of what Finland received from Alexander I was due to this man. As secretary of state for Finland in reporting the Finnish affairs to the tsar he had a good chance of influencing the latter.

Alexander very willingly agreed to all the liberal measures concerning Finland and many times spoke openly of the Finnish constitution, a fact of great importance for the whole future of the country. The tsar was glad to be able at last to do something toward the realization of the constitutional dreams of his youth; in Russia proper many circumstances militated against the realization of liberal reforms and thus frustrated all his efforts. In Finland, on the contrary, such obstacles did not exist; the country had its old laws and privileges, and was a stranger to the Slavic world so that no Russian interests could be affected by the independent administration of Finland. There existed hardly any trade between the two countries, scarcely any Russians lived in Finland, and the official and court circles of St. Petersburg did not care in the least about what was going on there. All this made Alexander feel that his hands were free; he thought he thus had an opportunity of giving the Finns, and the outer world as well, a proof of his liberalism by

[1]Similar to the mediæval German diets.

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sanctioning a constitution. The ovations and sympathetic reception he received in Finland helped to strengthen these feelings and finally led to his public recognition of Finland as a state.

But Alexander had also other considerations in mind. These were strategic ones; he wanted to make good friends with Finland so as to have his rear safe in case of military complications in the west for it would have been most dangerous for Russia to have a foe so near the capital, the Finnish border being only some 25 miles distant from St. Petersburg. In 1809 such complications on the western frontier seemed quite probable. Here the tsar showed himself a very far-sighted statesman, his Finnish policy guaranteeing Russia good friends and even allies, where before she had only enemies. For the ninety years that Russia honestly kept to her pledge of not interfering with the Finnish constitution, she had good and sincere friends in Finland.

The constitution of Finland is based on two different acts, which do not coincide in time; one was the sanction at Borgo of the laws regulating the inner administration and consequently the relations of Finland to Russia; the second, embodied in the treaty of Fredrikshamn, regulates Finland's position from the point of view of international law, viz., its position among other European nations.[1] This is not the only example of a case where two such acts do not coincide in time; on the contrary it very often happens that the international status of a conquered province is decided at a different time from that of its inner status or administration. An example of such a case is Alsace-Lorraine, conquered by Germany in 1871; its international status being defined on February 26 and its inner status and its relations to the German empire not until June 9.

According to the first act (that of Borgo) Finland was granted a constitution; here we have two important points to emphasize: first, that the constitution was *granted;* second, that it was a *constitution.* The act was not a bilateral contract; the latter theory is now entirely abandoned; it was a solemn promise of the

[1]An international agreement concerning a territory does not establish the inner administration or public law status of such a territory.

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Russian tsar-grand duke, by which he bound himself and his successors to uphold the Finnish constitution. Previous to the grant Alexander's will was free and unbound; but the moment the grant was consummated by his promise and signature, he become bound by the constitution. This meant two things: 1. The restriction henceforth of the monarch's powers concerning the Finnish people. 2. The legal fact that, in Finland, only such measures could be considered law as were passed by the Finnish diet and sanctioned by the Finnish monarch, the grand duke. This is now the *communis opinio doctorum*. Alexander did not create at Borgo an entirely new constitution, but sanctioned the already existing Swedish laws, which henceforth were to be the Finnish constitution; these laws were the so-called 'Form of Government" of 1772 (see especially secs. 2 and 5) and the "Act of Union and Security" of 1789 (see especially sec. 2).

The two above mentioned points are of the greatest possible importance as it is against them that the present policy of the Russian government is directed.

Thus the tsar, since 1809, represented a double juridical person, as emperor of Russia and grand duke of Finland.[1] During the nineteenth century this was the more important on account of the very different status of these two personalities; on the one hand we have an autocratic power, that of the Russian monarch, legally not limited; on the other, a constitutional or limited monarch, the grand duke.[2] All through the nineteenth century this distinction was strictly maintained in governmental practice, as well as in law. It was only as late as 1899 that it came to be disputed by the Russian government. At this time

[1] The oath of ascension to the throne of the Tsars mentioned separately the "throne of Finland;" thus corresponding to the two juridial persons there might be asserted two thrones, the Russian and the Finnish; the author however thinks that in this case it is only a question of a double title.

[2] Russian reactionaries later on raised the objection, that Alexander, being an autocrat, could not restrict his own power and always remained an autocrat for Finland as well as for Russia. This objection, however, hardly needs discussion; it really comes to a negation of any grant of a constitution and could be directed against the modern Russian constitution of 1905 just as well. Needless to say the

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the question arose as to the guarantees of the Finnish constitution; where were they and what were they? The danger of the second, autocratic, personality overshadowing the limited monarch of Finland became very evident. There existed but one guarantee, and this was—the monarch's promise. Alexander was bound by his acts at Borgo; his successors by their oaths of accession to the throne, according to which each one of them promised solemnly to comply with the existing Finnish laws and privileges, viz., the constitution.[1]

The limitation of the monarch's power is an essential part of the constitution of Finland, as it is of almost all other constitutions. Another essential part is the exclusion of the Russian government from participation in most cases, though not without exception, in the affairs of Finland. The international status of Finland as well as the fact of union with Russia, create for the latter country some fields of action in Finland; in other words there exist and always have existed certain legal questions which fall within the competence of the Russian and not the Finnish state. These are: 1. The laws of succession to the Russian throne, Finland has nothing to do with; the order of succession, the laws concerning the imperial family, regencies, the coming of age of the heir, etc.,— all being questions regulated exclusively by Russian laws.[2] 2. The international relations, including the treaty-making power as well as the power of war and peace; all the foreign relations of Finland are in the hands of Russia; it is the latter country alone, that represents Finnish interests abroad; Russia is free to conclude any treaty or make any arrangement she chooses concerning Finland

history of the nineteenth century stands in flagrant contradiction with that theory. We know of many instances where constitutions have been granted which have restricted the monarchical power very effectively. From the moral point of view this theory is most defective, as it amounts to a negation of the sanctity of the monarch's word.

[1] The text of the tsars' oath will be found in the book of J. R. Fisher, Finland and the Tsars, p. 39 et seq.

[2] A similar example can be found in the German empire which has no laws of its own concerning the succession to the German throne; it is the Prussian laws that regulate these questions; the federal laws simply refer the matter to the latter.

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without considering the opinion of the Finnish people. This certainly is a great menace to the Finns. The Canadian principle seems much more just, as it gives Canada a voice in international affairs, which concern her interests. 3. The position of the foreign consuls in Finland is also regulated by Russian law. 4. The Russian army, quartered for Russia's defence in Finland, remains under the jurisdiction of Russian law and under the direction of the Russian ministry of war; the same applies to the navy. 5. Finally, Russia has some institutions in Finland which are also subject to Russian law. These institutions are: *a*. The Russian orthodox church. *b*. The Russian schools located in Finland. *c*. The office of the Russian treasury, kept in Finland in order to finance the Russian institutions, as well as the army and navy. *d*. The telegraph and postal services.

These are the only cases where Russian laws can be applied in Finland, according to the constitution of the latter country. In all other cases only Finnish laws are valid in Finland. This certainly means an important restriction for Russia, affecting the powers of her government, as well as those of the tsar. It is just this point that has proved so serious a bone of contention of late years. The Russians are no longer willing to allow such a restriction of their powers. Their contention is, that the development that has taken place in the mutual relation of Finland and Russia, since Alexander's reign, proves conclusively that Russian interests need a better protection in Finland and, hence, that Russia ought to have much wider powers there. The reactionaries go so far as to say that Russia ought to have a free hand in Finland and should not even consider the local laws; this latter theory, however, is purely and simply a negation of all legal order and a defence of arbitrary government.

That the interests of the Russian empire do at the present day necessitate a widening of Russia's powers in Finland may be the case; and in the author's opinion such is the case. Time can alter very much the legal relations of two peoples; the status created by Alexander in the beginning of the nineteenth century no no longer corresponds to the requirements of the twentieth century.

This, however, cannot in any way affect the Finnish constitu-

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tion; if a change is necessary, it can be legally enacted only in a constitutional way. The Finnish constitution states clearly that no law can be enacted, which is not passed by the Finnish diet; thus if the Russian government believes that new laws should be created, which would give Russia wider powers in Finland, it should ask the diet to pass the law and give it the necessary powers. The Russian government, on the contrary, considers that since such Russian interests do exist, it can protect them in spite of, and in opposition to, the existing Finnish laws. The government recently pushed through the Russian duma and council of empire a law concerning Finland, without consulting the Finnish representative assembly. This is a serious breach of Finland's constitution, but at the same time a much more serious breach of the Russian constitution as well, as the Russian laws do not empower the Russian government to take any such steps. The danger lies in the future; a constitutional breach is always a very dangerous precedent as it is sure to undermine the moral authority of the body that commits the breach. The same principle might at any time be applied to the Russian duma itself and legislation might be passed over its head.

The question of real importance for Russia and the one in which Russian interests are really at stake is that of military defence. The empire must have the possibility of defending itself from its enemies. From a strategical point of view Finland might prove very important, consequently, Russia has to have there a number of fortifications, defended harbors, etc., and also is obliged to maintain a strong army corps. The Finns have never objected to this and practically the Russian government has always had a free hand in this question.

More difficult is the solution of another question—the question concerning the military service of the Finns. The Russian argument is that as Russia protects Finland, the latter country must share in the military burden of the empire. The Finns answer that they have always agreed to this, and that formerly, when they had their own army, they willingly helped Russia, giving as example the valiant deeds of the Finnish battalions in

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the Turkish war of 1877–1878. They maintain only that the Finnish regiments must first of all be used to protect Finland proper; an argument that is hardly to be disputed. But the Russian government was so much afraid of the Finnish troops that it abolished them toward the end of the nineteenth century, sending to Finland a Russian army corps. At the present day the Russian government contends that as Finland does not send her young men to serve in the army, the Finns must pay a yearly contribution instead. A very serious conflict arose between the two countries over this question, and the dispute has not yet been settled.

In Finland the legislative power is in the hands o the diet and the grand duke; the former discusses the laws to be enacted, the latter sanctions them. Their coöperation is thus absolutely necessary; and the sanction of the grand duke is not merely a veto-power; it is much more than that, being an essential part of the law-making power.

Formerly the diet was composed of four chambers or "estates": the nobility, the clergy, the burgesses and the peasants. In 1906 a new organic law was enacted, creating a single chamber of 200 members elected by universal manhood and womanhood suffrage. It is this body that at the present day legislates for Finland.

Much more complicated is the matter of the organization of the executive power. As in any other monarchial country it is the monarch of Finland that is the real head of the executive. He exercises his power either personally, making his will known through the secretary of state for Finland (now called "minister-state-secretary for Finland"), or by delegating it to the Finnish administration. The latter is conducted by the governor-general in council. The council bears the rather puzzling name of senate. It has two "departments"; one is the judicial department, a sort of high court of Finland; the other is the real ministry. The governor-general is the president *ex-officio* of the senate; each of the departments has its own vice-president; the judicial department constitutes a single body, whereas the other branch, called the "economic"-department, has seven sections, called "expeditions," representing seven ministries.

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The council began its work in 1809, and in 1816 it received the official name of "imperial senate of Finland."

One of its most important functions is the publication of laws, for no law can be applied by the courts or by the administration unless published by the Senate.

The minister-state-secretary must reside wherever the tsar makes his residence; now it is always in St. Petersburg; his chief function is to act as the channel of communication between Finland and Russia. In 1809 a special committee was established consisting of Russian officials, which had to consider all matters regarding the mutual relations of Finland and Russia. In 1811 this committee was changed into a special Finnish office, with Finnish citizens as members, presided over by the secretary of state for Finland. Its duty was, as before, to consider the measures and laws of common interest to the two countries. Later on it was abolished; the state-secretary being obliged to communicate to the Russian ministers all measures and laws which could affect Russia. For a very long time he remained the only channel of communication between Finland and Russia; it was through him for example, that the governor-general or the senate communicated with the tsar or the Russian government. This method of procedure is considered by the Finns the only legal one; the Russian government, on the other hand, now contends that it does not guarantee Russia a sufficient protection of her interests and that all measures and all laws, without exception, should be communicated to the Russian ministers, who may then decide whether the projected laws or measures concern Russia or not; in the former case they may advise the emperor to pass, amend or veto the law according to the interests of Russia; in the latter case they may leave the matter to the minister for Finland who would report it to the tsar-grand duke. It is small wonder that the Finns have energetically protested against this new order of things, enacted in June, 1908.[1] In the first place the measure is certainly illegal, as it does not correspond to the existing Finnish laws, accord-

[1] Details concerning the act of June 2, 1908, can be found in the pamphlet of Th Kokoshkine, Le Conseil des Ministres de Russie et les affaires Finlandaises, 1909.

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ing to which the Finnish minister is the only channel of direct communication with the monarch; secondly, it gives the Russian ministers far-reaching powers, which create a serious impediment to Finnish autonomy and independence. The political events of the last years show clearly that the Russian government intends by this means to annihilate Finland's independence. In every question that has been discussed during these last two years, the Russian government has attempted to interfere under the pretext of deciding whether or not Russian interests are involved. Consequently the council of Russian ministers has now become a body superior to the Finnish senate.

The third power, the judicial, is in the hands of the Finnish courts. There exist a number of lower courts throughout the country, the larger cities having their own municipal courts; then there are three courts of appeal at Abo, Viborg and Vasa, and the high court, which is the judicial department of the senate.

The most important drawback of this system is the organization of the senate; the senators are all appointed by the tsar and hold their places subject to his approval. Consequently they do not have the necessary independence. The appointments are almost purely political, which is very pernicious for a high court. Then also, the judicial department has certain executive duties. This is in contradiction to the theory of separation of the judiciary and the executive, one of the fundamental principles of modern public law. Public opinion is clamoring for the reform of this high court; it ought to be separated from the rest of the senate, transformed into a really independent high court and freed from all executive business.

Considering the organization of the executive power, it must be admitted that there cannot be any question of the existence of a personal union between Russia and Finland. The union is a much closer one and of a more complicated character. But neither can it be classed under the head of the German theory of Real-Union,[1] for one of the main requisites of a real union is the legal equality of both parts of the union, whereas Finland was

[1]This latter theory had some defendants in the nineteenth century.

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never the equal of Russia, but always a subordinate commonwealth.

Thus we are reduced to three other possibilities: Finland may be regarded either as a non-sovereign state[1] or a "state-fragment" (the theory of Prof. G. Jellinek); or, finally, as having the position Canada has in the British empire. The last seems to be the most exact analogy, for though Canada has far wider powers and privileges than Finland ever had,—theoretically, their position is very much alike. Under normal conditions Finland would have developed her autonomy just as Canada did, loyally supporting the empire and its sovereign.

The policy pursued by Russia has been, however, a very serious impediment to such a normal development. Already toward the end of Alexander's reign the executive power began slowly to drift into the hands of the governor-general. In the reign of Nicholas I this process developed much more rapidly. General Zakrefski, then governor-general of Finland, lost no chance of increasing his own power to the detriment of the senate. At this period of Finland's history there was no question of summoning the Finnish diet; the whole administration was concentrated in the hands of the governor-general; theoretically, however, the Emperor Nicholas still kept to Alexander's idea of Finland's autonomy, notwithstanding his autocratic régime. We have many facts proving that Nicholas held this view, and did not consider Finland a province of Russia, but an autonomous state.[2] His successor, Alexander II, on the other hand gave the Finns new proofs of their independence; he summoned the diet several times and in one case, September, 1863, gave solemn assurances to Finland of his wish to respect the Finnish constitution.

It was during this reign that new statutes were issued concerning the Finnish diet (1869), a law passed giving Finland

[1] Professor Ullman, for example, and the Finnish Professor R. Hermanson defined Finland as a subordinate state.

[2] An important fact is to be noted here; not summoning the diet and increasing the powers of the governor-general, Nicholas never violated the constitution of Finland, only those laws were considered as having force in Fairland, which were passed by Finnish organs.

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its own separate monetary system and another law giving the country its own military organization (the Finnish batallions existed up to the end of the nineteenth century; the monetary system still exists at the present day, 1910).

The fact that the diet was not convened from 1809 to 1863 was certainly not in strict keeping with the spirit of the constitution, but it implied no violation of it, as the monarch was not obliged to summon the representatives unless he wanted to enact new laws, or levy new taxes, which he could not and did not do without the coöperation of the diet. The existing legislation was quite sufficient for the needs of the time, the minor changes being effected by administrative orders of the crown. The monarchs were very careful to avoid any clash between such administrative orders and the existing laws, which is one more proof of their feeling of respect for the constitution. After all, this was not a difficult task for the crown, as the latter's powers according to the Finnish laws are very wide.

Beginning with 1863 the diet was convened more or less regularly every four years and duly legislated for the country. This state of things prevailed under both Alexander II and Alexander III, who many times expressed their intention of upholding the constitution.

To summarize briefly the position of Finland from the point of view of public law, we must note that the country possesses separate fundamental laws (Verfassung or constitution), which cannot be legally altered otherwise than with the assent of the Finnish people; further, the inner status of the country or the constitution, is based on the solemn promise of the Emperor Alexander I, given at Borgo in 1809; all his successors have repeated this promise in their oath of accession to the throne; this is also stated in Article VI of the Fredrikshamn treaty, though this article has no binding force, but is merely a declaration of fact;[1] the international status of Finland is however established

[1] Sir E. Fry very well defined this point in saying that "the treaty of Fredrikshamn recognizes the existence of the previous transaction between the czar and the people of Finland and that as *res inter alias acta* this could in no case rescind the solemn contract of Borgo."

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by Article IV of the Fredrikshamn treaty. From the point of view of international law Finland is only a part of the Russian empire.

Further, the legislation concerning the succession to the throne, the regency, the imperial family, and similar questions, depends exclusively on Russian law, as do also all questions concerning international relations, the treaty-making power, the conclusion of peace or declaration of war, alliances, etc.; thirdly, Russia has in Finland some institutions, as well as an army and a navy, all of which are under the Russian laws. All other legislative, judicial and administrative matters are to be dealt with exclusively by Finnish laws. No laws are legally binding in Finland but those enacted in the manner prescribed by the fundamental laws; the only exceptions are the above mentioned cases.

From a theoretical point of view the position of Finland in relation to Russia may be defined, either according to the German theory of non- or semi-sovereign dependent states, applied to so many cases at the present day (Professor Jellinek's "Staatsfragment" would be the best definition), or compared to the English theory of "dominion," which theory fits the case much more closely. Finland, like Canada or New Zealand, has more the character of a state than a Swiss canton or a modern state of the North American union.

The theories of public law of the nineteenth century, which still form the basis of our judicial ideas, no longer correspond to the political, social and economic development of the peoples of the twentieth century. Finland offers a striking example of this.

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WHY THE CHINESE OPPOSE FOREIGN RAILWAY LOANS

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When the report of Chinese opposition against foreign loans reaches the western world, a certain class of people at once call such opposition the outcome of the historical anti-foreign feeling, oriental exclusiveness, self-conceit, and Boxerism. They assume that the Chinese have no grievance at all, and that these orientals "kick" simply because they are self-conceited heathens who do not know what is good for them. The more representative class, however, do not unreservedly subscribe to this opinion. They interpret the opposition as a manifestation of "Chinese nationalization." Thus the New York *Tribune* in an editorial calls the recent opposition to the Hankow-Szechuan loan as "a strikingly characteristic manifestation of the rampant spirit of 'China for the Chinese' which prevails in large parts of the country."

There is much truth in this interpretation. But it points to only one of the many phases of the case. It is, therefore, inadequate to explain the whole situation and is misleading when taken as the premise for the solution of the problem. In order to understand fully and estimate aright these oppositions which are likely to exist in the future, we should examine closely the underlying causes from all points of view.

Before citing some of the most important of these causes, we must, however, notice that a foreign railway loan in China is entirely different from what it is in the United States. Here foreign loans are made by the issue of bonds which are placed on the market as a purely financial undertaking; but there it is made only through complicated diplomatic negotiations, involving

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both national and international politics. In this country the borrower, whether public or private, determines the amount to be borrowed and the rate of interest to be offered, according to the market conditions, as a purely financial deal; but there the jealous powers determine the amount of the loan, the rate of interest, and also name the creditors. When China wants to make a foreign loan, she has on the one hand to observe the doctrine of equal opportunities, and on the other hand to listen to the claims for special privileges. Placed between these obstacles, she has often contracted loans which proved objectionable at least to the people.

Foreign capital is needed in order to build the railways of which the people themselves feel the need. Nor, indeed, are the loans in themselves altogether objectionable; but the people resent the provisions of the contracts and the manner in which these contracts are interpreted and carried out.

First of all I must confess that China herself is much to blame for the opposition. Her officials and her financial administration have often called forth distrust. The reported corruption connected with the negotiation of some of the foreign loans has been one of the most flagrant causes. Both our officials and some foreign powers have been accused by the people of being guilty in this connection. While I do not believe that all the suspicion of the people is justifiable, I cannot but feel that there must be some reason which leads the people again and again to assert that certain powers have often employed, with great success, the offer of "presents" to the Chinese negotiators. Some loans are known to have been concluded largely because the selfish designs of those in charge of the negotiations were satisfied. The highest official in the Empire was reported to have said that he knew that "squeezing" for personal profits by those in charge of foreign loans existed. The government herself once admitted the principle that her "officials were incompetent to administer honestly the proceeds of a foreign loan to the satisfaction of the investors, and having once placed her financial probity in question, she has been forced through successive similar agreements to follow a practice which no other nation in the world would tolerate for

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an instant." It is hard to tell how much corruption has actually existed among the officials in negotiating foreign loans; it is still more difficult to determine to what extent some of the foreign powers really have resorted to the practice of bribing in securing privileges; but it is an undeniable fact that the belief of the existence of such corruption has been one of the most irritating causes.

Aside from this suspected corruption, the people also believe that under the present financial condition it is unsafe to add any more loans to China's heavy debt. The conservation of China which is as well recognized by the Chinese as by foreigners, is at the present moment threatened chiefly by the chaotic condition of her national finance. Foreign loans, as has been remarked, always involve international complications; and in a country like China no one knows what in certain eventualities such complications are likely to involve. This situation is aggravated by the policies and practice of certain European powers. Thus a *Times* correspondent says in unmistakable words, that "the alacrity with which Germany seized Kiaochow and laid hand on Shantung . . . . should remind China and others besides China of the dangers to which she would be exposed should the reckless borrowing . . . . . lead to national bankruptcy." These fears constantly hang on the minds of the Chinese people. They feel that, because of China's present financial condition, every additional foreign loan adds so much danger and introduces so much excuse for aggression.

On the other hand the foreign powers also seem to be responsible for the opposition. They appear to follow different principles in dealing with China in such financial matters from those they follow in dealing with each other. They often disregard, or at least seem to forget, her complete freedom as a sovereign in making loans. Coercion and pressure are sometimes brought to bear upon her negotiators, to say nothing of the numerous claims and counterclaims made under the guise of equal opportunities and special privileges. China enters into negotiations with the capitalists as contracting parties of the same status, while the powers watch over the transaction and interfere as if they were superiors to both these contracting parties. Loans are made only through

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the intervention of the foreign office of some powers. Diplomatic representation is not only the first step, but the sole means by which foreign capitalists deal with China. The diplomatic officers, as in the middle ages, seem to lower their dignity and become representatives of these financiers in seeking concessions. What Dr. Drago said of the unwarranted intervention of the Europeans in South America may also be said of what exists in China. This intervention, moreover, often can find no justification in principle but is based purely on force and on a failure to recognize the complete sovereignty of China. The Chinese people consequently ask: Why do these foreign powers treat China differently from the way they treat each other? They naturally resent such unwarranted interference.

Moreover, the people believe that the foreign powers in "forcing" loans upon China have ulterior motives. They think that it could hardly be consistent with the dignity of a nation to make so much effort, as some of the powers do, in helping their subjects to lend money to China, were there no other motives behind the loan itself. Thus one of the leading Chinese papers in an editorial says, "To get around the moral restrictions agreed to by the powers in respect to the integrity of China, now some of these powers use the apparently innocent, but most effective and treacherous pretext of financing our railroads to satisfy their wanton hunger for territorial aggression. Under the excuse of equal opportunities, they force their capital into our country, obviously for devious purposes. Open and abrupt seizure of our land is easier to prevent than this slow, hidden advance. . . . Their power follows their capital!" In short, the Chinese see the ambitious rivals seeking to drive a wedge further and further into their territory through the employment of subterfuge in the form of loans.

Not only have the Chinese noticed these ulterior motives, but European observers also have acknowledged them. Thus in speaking of the Shanghai-Nanking railway, one writer says, "But this is not a question merely of a railway, or even of a railway with the most brilliant prospects. If the Shanghai-Nanking railway were only that, it would not be entitled to our notice.

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But by the unanimous agreement of all competent authorities on China, railways in that Empire signify *power* and *influence*. Along the route and in the region through which they pass will spread the reputation, *power* and *influence* of the *race* that directs their destiny and operation."[1] He may have well added that financial control of a railway in China by a foreign power eventually means the political control of that railway and its adjoining territory.

Nor are the fears of the Chinese people entirely imaginary. There are already not only unmistakable expressions in Europe in favor of seizing Chinese territory, but there are also many consummations of these expressions. Beginning at the extreme south, we find nearly all the valuable ports of China are either taken away by brutal force or "leased" from her, until to-day with a coast line of some 3000 miles, she cannot find a decent harbor for a naval base. Therefore, the people fear that under the cover of financial intervention, which is surely to follow financial transactions, the yearnings evidenced by these expressions and acts of the powers may be suddenly stimulated and gratified.

Moreover, the past history of railways in China augments the people's fear of the ulterior motives of the foreign powers. They see that Germany in Shantung, by building the Chinan-Kiaochow railway has grasped the mining and many other privileges, and at the same time threatened the integrity of that province. They also see that it was the eastern Chinese railway which led to the occupation of Manchuria by Russia and later, after the bloodiest war of modern times, by both Russia and her foe. Most complicated political interventions have originated from trifling financial questions; whole provinces have been snatched away through railway contracts. Concessions have been made and re-made, loans have been concluded and defaulted; all at the cost of China. The recollection of these actions of the foreign powers firmly establishes in the minds of the Chinese a conviction that every foreign railway enterprise marks some deep laid scheme of political aggrandizement at China's expense. It is this conviction which leads the people to oppose foreign loans.

[1] Italics are mine.

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The people also regard the conduct of the stronger countries in dealing with the weaker ones as China's warning. They cannot forget the downfall of Egypt and the embarrassment of Portugal, Venezuela, Nicaragua, Turkey, and Persia, which were due to to the diplomatic interposition and actual armed intervention on purely financial grounds. The leading papers in China again and again emphasize the fact that it was by building a canal that England claimed a moral right in Egypt which even the jealous powers of Europe could not deny, and that it was by incorporating a trading company she subdued India. Temporary interventions for the protection of their interests in China can more easily assume a character of permanent occupation than in any other country. These and many other similar unfortunate facts lead the Chinese to conclude that foreign railway loans and foreign aggression go side by side.

Again the terms of the loans are often objectionable. In addition to the high rate of interest and extravagant guarantee, certain powers invariably exact as many special privileges as seem permissible in the face of international jealousy. They insist in nearly every railway loan that the engineers, accountants, and comptrollers must be their subjects, that the power to judge and receive material must rest in their hands, and that material itself must also be bought from their merchants. In short these powers in trying to lend money to China, want to get everything which they can possibly lay claim to through the loan.

Even then things would not have been so bad were it not for the past record and present attitude of some of the powers in such matters. Since our own people are behind in technical training, we certainly cannot object to the employment of foreign engineers and accountants, and since our own manufactures are not sufficient, we certainly want to use foreign material. What justification can the Chinese find in opposing these stipulations? The answer becomes self-evident when one is acquainted with the real meaning of such provisions and knows what they involve. Such stipulations may not amount to very much in this country where the government can enforce its will, but they become very cumbersome and objectionable in China. Besides the polit-

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ical responsibilities, there is a constant fear of intervention arising out of mere pretexts, mis-interpretation of phraseology, injuries to persons and demands for indemnities, which are so frequent in China. Aside from the numerous hardships arising out of such employment of foreign administrative officers and the obligatory purchase of foreign materials, etc., it may be well to examine what the compulsory employment of foreign engineers means.

Under the protection of extra-territoriality foreigners in China enjoy special advantages. They cannot be subjected to the local authorities, but "they carry their own law with them and are accountable only to their consuls, who may be thousands of miles away." Under such circumstances, if the engineer were employed entirely by the Chinese, he would feel the obligation of carrying out the wishes of his employers; but when he is employed under "treaty rights," being accountable only to his own government, he feels no responsibility to the Chinese government, which pays for his services but cannot control his actions. As if fully conscious of his irresponsibility and of his safety under the protection of extra-territoriality, he at once assumes an air of insubordination and arrogance. He often seems to say that it is below the dignity of an American citizen or an European subject to listen to any thing which a "Chinaman" may tell him in regard to local customs and traditions. He seems to think that it is inconsistent with the modern sense of liberty to observe any of the "heathen" rules of conduct. While at work he often proves a nuisance to his Chinese superiors and a tyrant to his subordinates. Coolies are often caned and kicked without the least provocation. Happily, however, the Chinese do not understand what utters from his lips! When he feels through with his work, he with his 'mushroom-looking' hat, 'saddle-like' coat, and 'grasshopper-legged' trousers, often sets out with his gun to enjoy himself by shooting whatever somes in his way, chickens, dogs, cats, and what not. Near the treaty ports his appearance is not so objectionable; but in the interior where the railways are built his features and conduct often create great consternation among the villagers. I have heard of cases in which foreign engineers have actually been called the genuine 'missing-link' and mobbed

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on account of their queer appearance. It is too long and unpleasant to tell what follows such an incident. Suffice it to say that it often results in disorder which is followed by the much-dreaded but 'tame' practice of diplomatic intervention ultimately resulting in the payment, by China, of heavy indemnities, and, perchance, the "chopping off" of three or four heads for every forefinger lost or injured. Thus in some instances the Chinese government has been compelled to station a company of soldiers with drawn bayonets to insure the safety of the foreign engineer wherever he goes. When these unfortunate incidents are fresh in the minds of the Chinese, what else can be expected besides opposition?

The controlling powers exercised by the engineers under the loan agreements is equally objectionable. As in the Shanghai-Nanking case, the engineer has "practically control over the disbursements. Only favored British manufacturers were permitted to tender for supplies, and only British material was recommended and purchased . . . " With engineers in charge specifying standards prevailing in Great Britain, the logical end is the monopolization of the Chinese market for British manufacturers.

It is not, however, for any altruistic reasons of opening her market to all her neighbors that China objects to such monopolization; it is on account of the extravagance and unnecessary expenditure resulting from such control. The Peking-Kalgan road, which has been repeatedly called the most difficult railway engineering feat in the country cost only $41,000 per mile under Chinese control; while the Shanghai-Nanking line, which involves far less engineering difficulties, cost over $53,000 per mile, under British control. After reviewing the per-mile costs of a number of other railways, an observer concludes that these figures "tell the story that China is forced to expend much more for her foreign built roads under the restricting terms of loan agreements than she would if left untrammeled in the supervision and control of expenditures. China could more than double her railway building if unmolested in the administration of her affairs." This remark vividly portrays the immediate economic effects of foreign interference.

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Under the provisions of loan agreements based on the foregoing principles, China has been deprived of authority in her own affairs. General suspicion and indignation have been created all over the country, which on the one hand greatly hinder China from availing herself of the much-needed foreign capital in the development of her resources and on the other hand prevent the commercial world from enjoying China's opportunity. While Chinese nationalism and Chinese conservatism have something to do with this hostile attitude of the people, these by no means form the only or even the leading cause of such an attitude. When the Chinese people see the intrigues of the powers behind the loans and the interventions on all sorts of pretexts which usually take place soon after the conclusion of a loan, and when they see that provinces are actually snatched away through the instrumentality of railway loans, they cannot help opposing further loans. They may have gone too far and become unduly cautious in some cases; but there is little doubt that they find much justification for such fears in the acts of some powers. In spite of the one-sided stories we hear of the heathen Chinaman, "he is," as said an American writer, "reasonably patient and tolerant . . . If he opposes the schemes employed by the powers whom he regards as "grasping, domineering intruders . . . he often has good reasons to do so."

In order to remove such opposition so that China may develop her resources quickly with foreign capital and that foreign countries may share in her development, both sides have to remove their irritating causes. "China's credit is good." Her finance is reorganizing and the standard of her officials is rapidly improving. Moreover, the government greatly desires to ameliorate the condition so as to be able to make use of foreign capital. On the other hand, the powers will have to modify their attitudeand change their practice in China, if they desire to make the best out of the opportunities in the Far East. International morality, fair play, the maintenance of the open door, and the real and lasting interest of the world demand that China should be permitted to have exclusive and complete control of her loans and railway concessions.

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THE CONTROL OF IMMIGRATION AS AN ADMINISTRATIVE PROBLEM

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I

Our laws affecting immigration represent the accretions of ninety years, but the great mass of this legislation falls within the last third of this period. Since 1882 Congress has passed a score of immigration acts and amendments, besides the numerous immigration features embodied in laws relating primarily to other subjects.

From the standpoint of purpose and aim, the provisions of this legislation may be grouped under four main heads: 1. Restrictive; 2. Protective; 3. Distributive, and 4. Administrative.

For the first group a more accurately descriptive phrase would be "Restrictive and Selective," for it is impossible to dissociate, in most provisions, the purpose of restricting the *volume* of immigration, lest the number of comers prove too great for our receiving population, and the purpose of controlling the *quality* of our immigrants, lest our citizenship suffer through undesirable additions.

What are the *restrictive* and *selective* provisions of our laws? In the first place, certain classes of aliens are excluded from admission to the United States. Since our first federal measure of restriction in 1862, this list of the unwelcome has gradually lengthened, until to-day twenty-three classes may not lawfully enter. These classes may be grouped according to the ground upon which the exclusion rests:

1. First are those excluded as *mentally unfit*: idiots; imbeciles; feeble-minded persons; insane persons; persons who have been insane within five years; persons who have ever had two or more

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attacks of insanity; and, persons finally, who, upon examination by surgeon, are found to be so mentally defective as to interfere with their ability to earn a living.

2. In the second place, are the *physically unfit*, including epileptics; tuberculous persons; persons afflicted with loathsome or dangerous contagious diseases; and persons who, upon examination by surgeon, are found to be otherwise so defective physically as to interfere with their ability to earn a living.

3. In the third place, certain classes are excluded on the ground of *moral unfitness*: prostitutes, or women and girls imported for immoral purposes, procurers and persons attempting to bring in such persons; polygamists; anarchists; convicts and self-confessed criminals (except those guilty of purely political offenses).

4. In the fourth place, certain classes are excluded for reasons which may be broadly termed *economic*. In this miscellaneous group fall paupers, persons likely to become public charges, and professional beggers first of all. To these are to be added assisted immigrants, unless they can show conclusively that they do not belong to any of the other excluded classes and that their transportation has not been paid by any corporation, association, society, municipality, or foreign government. And finally, contract laborers complete this economic group. On the margin of this group are to be noted children under sixteen years of age, if unaccompanied by at least one parent; these may in the discretion of the Secretary of Commerce and Labor be excluded, lest they swell the army of defenceless child laborers or become the victims of procurers.

5. Then as class "23," the *Chinaman* is singled out from among all the sons of men, and excluded because he *is* a Chinaman. The presumption is in favor of the admission of the Japanese, the Turk, the Indian, the Italian, the Hottentot; they come in unless the government officials can discover that they belong to one of the general excluded classes. But the presumption is against the admission of the Chinaman; he must show the government that he is a student, a teacher, a merchant, a traveller for pleasure or curiosity, a Chinese official, or a member of some other expecially favored class, in order lawfully to come over our borders.

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An eminent student of immigration has made the very interesting comment that our exclusion laws rest upon three distinct bases: some of them aim to exclude the *worst* immigrants, the vicious, the pauper, the degenerate, those most likely to prove unable to earn a living; some of them aim to keep out the *most prudent, i.e.*, those who had forethought enough to make sure of a job before starting for America; and some aim to keep out a people considered *so alien* in race, religion, government, as well as in standards of living as to be regarded as a menace.

These various provisions for the exclusion of enumerated classes constitute the main body of our restrictive legislation. They are, however, re-inforced by a number of stipulations which, while designed largely to facilitate the enforcement of the exclusion clauses and to meet the expense of administering the immigration laws, do also subserve a restrictive purpose. 1. Foremost among such provisions may be noted the *head tax*, which has been gradually increased until each master, agent, owner, or consignee of a vessel, transportation line or other conveyance bringing aliens to this country must pay to the collector of customs four dollars for each alien entering the United States through its transportation facilities. 2. There is also a restrictive note in the provision that, on all questions of exclusion, the decision of the immigration officers shall be final except for right of appeal to the Secretary of Commerce and Labor, and that appeal does not lie to regular federal courts. 3. Four classes of aliens are also subject to mandatory deportation from our country at any time within three years after their arrival. First, those who, at the time of entry, belonged to any of the classes of persons enumerated for exclusion and who should therefore have been rejected; those who have become public charges from causes which existed prior to their landing on our shores; women and girls who are found to be inmates of houses of prostitution or practicing prostitution; and finally, all who have entered surreptitiously, whether otherwise objectionable or not. This includes all who have entered at any time or place other than those designated by the immigration officers. These are for the most part deportable at the expense of the company or parties

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responsible for their coming, including one-half the cost of transportation from the place where they are discovered to the port of deportation. Furthermore, heavy penalties are fixed for certain acts which would nullify or vitiate the working of the exclusion provisions. For instance, the steamship company bringing an alien who is rejected at our ports must not only return him to the country whence he came, but must bear the cost of his maintenance while on land in this country; and all this on penalty of fine and of forfeiture of all clearance privileges at United States ports. In addition, companies are subject to a fine of one hundred dollars for each idiot, imbecile, epileptic, or person afflicted with tuberculosis or dangerous contagious or loathsome disease, that they bring to our ports. Still heavier penalties are fixed for violation of the laws concerning advertising and soliciting for emigrant passengers in Europe; for effecting or encouraging or assisting the importation of contract laborers, or of women for immoral purposes; for knowingly aiding or assisting the coming of anarchists; and for bringing in aliens not duly admitted by an immigrant inspector. 5. And may we not treat as a part of our restrictive legislation the extraordinary power of the President to suspend immigration for such time as he may deem necessary in order to protect the country from the menace of disease coming from abroad and so serious that the ordinary quarantine defenses seem inadequate?

The *protective* features of our immigration laws are, in their beginnings, among the oldest of all. They date from the United States Passenger Act of 1819. This act has been repeatedly supplemented by statutes designed the more fully to secure protection and good treatment for immigrants during their voyage to America. They specify the decks on which passengers may be carried; they declare how far below the water line passengers may ride; they fix the minimum of air space for each passenger and the minimum height of decks used for passenger traffic; they regulate the occupancy of berths, the ventilation, the toilet rooms, the food, the hospital facilities on shipboard; they forbid the carrying of explosives and other dangerous articles on these passenger-bearing vessels; and they regulate the transportation of animals on such vessels.

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With a view to protecting immigrants against harpies at American ports, certain classes of persons have been forbidden to board an incoming vessel until it has reached the dock. In recent years much attention and more liberal appropriations have been devoted to increasing the number and improving the facilities and fitness of immigration stations at various ports. They are being made more adequate, more sanitary, and more comfortable; and especial attention is being paid to hospital service and detention quarters. Boston, Philadelphia, Baltimore, New Orleans, and San Francisco have felt the beneficence of this movement; and "The New Ellis Island" is no mere figure of speech, but a significant reality.

The *distributive* provisions in our federal laws are soon told. Under this caption belong measures looking to a geographical distribution more conducive to the well-being of the immigrant and to the highest good of the nation—economically, socially and politically—than obtains at present. It is well known that immigrants tend to settle in the North rather than in the South; in the North Atlantic rather than in the North Central States; in the cities rather than in the country; in the most congested districts of those cities; and that the less advanced races furnish a much larger proportion of the inhabitants of the slums than do the more advanced races. Such mal-distribution aggravates most of the social, industrial and civic problems of the city and the nation. But to this problem of distribution Congress has seldom addressed itself. Once during the Civil War it authorized a United States Immigrant Office in New York to make contracts with transportation companies for carrying immigrants to their destinations. But this act was repealed in 1868, and for nearly forty years federal law did not concern itself with the matter of distribution further than to extend the mail service, which is one of the most important agencies of distribution. Finally in 1907, a Division of Information was provided for, whose duty it is to "promote a beneficent distribution of aliens admitted in the United states among the several states and territories desiring immigration. Correspondence shall be had with the proper officials of the states and territories, and said division shall gather from all available sources useful information regarding the re-

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sources, products and physical characteristics of each state and territory, and shall publish such information in different languages and distribute the publications among all admitted aliens who may ask for such information at the immigrant stations of theUnited States and to such other persons as may desire the same. When any state or territory appoints and maintains an agent or agents to represent it at any of the immigrant stations of the United States, such agents shall, under regulations prescribed by the Commissioner General of Immigration, subject to the approval of the Secretary of Commerce and Labor, have access to aliens admitted to the United States for the purpose of presenting, either orally or in writing, the special inducements offered by such state or territory to aliens to settle therein."

For the *administration* of these various acts, Congress has made larger and larger provisions, until today we have a numerous and highly organized immigration service. Its head is in reality the Secretary of Commerce and Labor; but general supervision is given over to the Commissioner General of Immigration who presides over the Bureau of Immigration and Naturalization in the Department of Commerce and Labor. The chief officials under him are an assistant commissioner general, a chief of the Division of Information, a chief of the Division of Naturalization, and a commissioner of immigration for each of the most important ports, viz., New York, Boston, Philadelphia, Baltimore, San Francisco, Montreal, San Juan, and New Orleans. Then come a regiment of subalterns, regular and special immigration inspectors; boards of special inquiry; clerks; assistants; superintendents; employees of every grade stationed at Washington, at immigrant stations, at offices of the Division of Information in various cities; a total of some thirteen hundred persons directly connected with this branch of the public service. Besides we must reckon in the coöperation of the revenue cutter service, the public health and marine hospital service, the customs service, and the navigation service of the federal government, as well as the coöperation of local authorities. The cost of this service averages some two million dollars per year, besides the growing expenditure for enlargement and improvement of immigrant stations. It is,

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however, only fair to add that the receipts from the head tax exceed in amount the regular expense of the service and so the immigration service is practically self-supporting, even including special disbursements for permanent improvements. Under administration should also be noted the detailed statutory provisions relating to manifests, examination, inspection, and registration; and also the mass of rules wrought out by the administrative officials, and now become much more bulky than the statutes themselves.

II

The suggested changes in our immigration laws are far more numerous than the provisions now in force. An exhaustive list of them would be a most voluminous document, full of variety, of contradictions, and of curious conceits. A selected number will serve to illustrate their diversity and their range. Bills and memorials were before the last Congress looking toward the increase of the *head tax* to ten dollars, to twelve dollars, to twenty-five dollars, to forty dollars; and an ex-governor of New Jersey has recently advocated its increase to one hundred dollars; at the same time the Liberal Immigration League suggests that it would be more in conformity with the American spirit to relieve poor steerage passengers from paying any head tax whatever. Concerning no other feature of our legislation have so many amendments been suggested as concerning the list of excluded classes. For instance, many would extend the group of the mentally unfit so as to include the illiterates, or those who do not measure up to certain higher standards of mentality. Some would debar, as physically unfit, all persons over sixty years of age, unless they have children resident here and able to provide for them. It has been repeatedly urged that the socialist be excluded along with the anarchist. This one would require a certificate of good character, that one have a certain sum of money, say one hundred dollars for the head of a family and twenty-five dollars for each other member, or enough to keep the family six months; and a third would keep out all men who do not bring their families with them or arrange to do so. It has also been recommended that the privi-

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lege of assisting immigrants to come to America be limited to the members of the immediate family. It has even been seriously proposed that all be required to declare their intention of becoming American citizens immediately upon arrival, on penalty of rejection by immigrant officers. A United States immigrant inspector extraordinary who was sent to Europe on a ferreting tour some years ago, returned with a quiver full of propositions, among which was the extension of the contract labor law to embrace all priests, ministers, clergymen and lecturers. Recent agitation over the Asiatic question has called forth a volley of memorials and recommendations designed either to extend our Chinese exclusion laws to the Japanese and Koreans, or to all Mongolians, or indeed to all Asiatics; or to require of all immigrants an understanding of some *European* language. At the same time Secretary Strauss of the Department of Commerce and Labor was advising that, even if we continued to exclude the same classes of Chinese that we have excluded in the past, our legislation be so modified as to permit freer immigration into our insular possessions and also to reverse the presumption against the admission of Chinese so that a Chinaman would be admitted unless it were shown that he belonged to one of the classes debarred under our exclusion law.

The extension of provisions for deportation has been a favorite theme. It is proposed to extend the period during which aliens may be deported from three to five years; to extend the list of deportable aliens so as to include all aliens who have been convicted of a felony since their coming to America; to make all aliens deportable who within a period of five or ten years fall into a class that would have been excluded at the time of their admission; to deport all who cannot, within a reasonable period of time, show unencumbered property of a certain value; to fine the steamship companies heavily for every alien whom they bring to America and who is debarred or deported for reasons which could have been seen at the port of debarkation; to fine these companies for every alien whom they bring and who is rejected, not simply for those who are rejected because mentally or physically defective. Dr. Steiner would abolish the steerage, pri-

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marily because it is inhuman; but in effect such a move would be tantamount to an extension of the passeanger acts, and would work for restriction. Still more radical are the suggestions of those who would limit the number of persons who may enter the United States from any one country in any one year; those who would suspend immigration for a period of years, and especially those who would suspend immigration indefinitely.

With reference to federal measures for the *distribution* of immigrants, two diametrically opposed propositions are now being urged. On the one hand, certain labor leaders and organizations are memorializing Congress to abolish the Division of Information, the only agency whose primary function is the distribution of immigrants; on the other hand, the Liberal Immigration League is circularizing our citizens in behalf of free transportation of immigrants to any part of the country where their labor may be in demand.

A notable thing about the more recent literature and discussion of immigration is the increasing measure of attention given to the matter of *protection* to the immigrant. The question of restricting and regulating the future coming of foreigners is not ignored; but it is forced to share the forum with the more immediate and more human question of safeguarding those who still continue to come while we are considering ultimate policies or urging some petty amendment. This new note is sounded in the report of the New York State Immigration Commission, which appeared last year, in the proceedings of the last National Conference of Charities and Correction, in the preliminary report of the present federal immigration commission,[1] and in the periodi-

[1] Note: Their special report of December 13, 1909, on steerage conditions, recommends legislation providing for the placing of government officials, both men and women, on vessels carrying third-class and steerage passengers, the expense to be borne by the steamship companies, and authorizing the Bureau of Immigration to send at intervals, investigators in the steerage in the guise of immigrants.

Their special report of December 1, 1909, on the importing of women for immoral purposes, embodies ten recommendations which are at once restrictive and protective in character and purpose and some of which were enacted into law by the session of congress just closed.

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cals from month to month. This new spirit would screen the alien from misrepresentations in Europe before he starts; from overcrowding, mistreatment, and exploitation on shipboard; from fraudulent practices of steamship and employment agencies, pseudo-bankers, notaries public, shyster lawyers, procurers, and other harpies in this country; from the discriminations of railways; from injustice in courts; from peonage and all the other ills that immigrants are heir to. Some of these ills it has been proposed to cure through federal legislation, though others must be left to state and local jurisdiction. It is maintained that the rejected immigrant should at least be permitted an appeal from the decsion of the administrative officers to the courts.

Closely allied to such protective measures is the project for inspecting emigrants abroad before they have yet set sail for America. Various plans have been suggested: inspection by United States consuls, by special commissioners of immigration stationed at the more important ports of emigration, by travelling boards of American inspectors who should go from place to place to examine candidates for emigration in their home towns where their true condition and characters could be more accurately determined. All these plans have in common a dual aim: viz., to shift our immigrants more carefully than is possible by present methods, and also to avert the tragedy of the rejected immigrant, of which we have heard so much. So popular was this idea of foreign inspection a few years ago that it seemed in a fair way toward legislative enactment. Indeed it did receive some recognition in the act of 1907, as we shall presently see.

Bills were introduced during the last session of congress providing that all aliens resident in the United States (with certain exceptions) be required to register annually with designated officials; and that all found here without certificates of such registration be subject to deportation.

III

Thus far this paper has consisted for the most part of a survey and classification of our immigration legislation and suggested

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amendments thereto. Let us now turn from pure exposition to criticism. By criticism is not intended a minute study of the working of each enactment mentioned nor of the practicability of the measures proposed. Such a study would be altogether profitable; but it must yield place to the equally profitable and even more fundamental inquiry as to the basis and method of all our dealing with the problem of immigration. Has our method been scientific? Has our basis been the largest possible knowledge of the facts? In the judgment of the writer we have been just about as unscientific as we have been in our dealing with most other social problems. We have too often been content to be guided by assumptions instead of knowledge; by grand shibboleths and hypothesis and broad principles of the brotherhood of man, on the one hand, and by narrow prejudices and provincial and arrogant feelings of superiority on the other. Despite all the outpouring of literature, legislation, and legislative proposal, we have not been sufficiently zealous in the pursuit of facts.

First of all, our statistical information has been needlessly defective. For example, until 1907 no statistics of outgoing aliens were kept at all. Consequently we have no measure of the volume of immigration up to that time. We talked much of "birds of passage;" but we were only guessing at their number. We talked and acted as if our immigration figures represented net additions to our national population; whereas, during the past three years the total emigration of aliens has equaled from one fourth to one half the immigration; and the emigration of some racial groups has even exceeded the immigration of those groups for the same period. For the year ending June 30, 1908, the number of immigrant aliens entering through our immigrant stations was 782,870; the number of emigrant aliens departing was 395,073; leaving a net gain to our population of less than 390,000. During the same period, the excess of emigrants over immigrants was for the Italians, 32,000; the Hungarians (Magyar), 5,000; the Slovak, 7,000; the Croatian, 8,000. It is true the exodus for that year following the panic was somewhat exceptional; but had we no statistics we could only have conjectured how great it was.

Our statistics of illiteracy would be much more significant if

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they rested upon actual tests, and not, as at present, so largely upon the declaration of the immigrant. And what is true of illiteracy is true of many columns of immigration figures.

The government use of the term "Slavic" has been unscientific and confusing. In statistical summaries, immigrants have been grouped as Celtic, Teutonic, Iberic, Slavic, Mongolic, and "All Others"; and the Hebrews (coming largely from Russia), have been classed as *Slavic*. This is only less exasperating than Mr. Hall's singling out the Bohemians and Moravians from the rest of Slavs, and grouping them with the Teutons in order to accentuate the contrast between the literacy of the Germans and the illiteracy of the Slavs. Amidst such juggling of the word Slav, how may Americans be expected to judge of the so-called menace of the Slav invasion?

In the second place, government investigations of immigration have been about as spasmodic, superficial, and inconclusive as our tariff investigations. This is true of the immigrant in this country as well as of emigration at its source. Now and then a commission labors a few months, reports in favor of certain legislation which is passed or rejected, and work is suspended. Now and then an inspector (sometimes of doubtful fitness) is sent abroad; he reports, inspires some more or less sensational magazine articles, and subsides. Our government waits until some phase of the immigration question has reached an acute stage; and then, yielding to the pressure of some class or section, passes laws which cannot await a study of all the facts. The Bureau of Immigration is of course a constant factor, but its work is primarily executive and not investigational, and it is largely officered by men who have won recognition as labor leaders rather than as scholars or statesmen.

In the third place, government activities have not been adequately supplemented by private undertakings. Much praiseworthy work has been done; but it has been sporadic, isolated and not properly coördinated. Its findings with reference to the immigrant in America are too fragmentary as yet to serve as a basis for generalization; and the study of emigration at its source is still in its infancy.

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Consequently, how are we to meet the searching questions which immigration insistently presents? For instance, who can say to what extent we are importing criminals, and to what extent we are making criminals of immigrants? Or to what extent we are receiving Europe's paupers, and to what extent we are pauperizing European immigrants here in America? Or to what extent illiteracy among our immigrants is due to lack of opportunity, and to what extent to lack of ambition or capacity? Are the newer elements in our American immigration essentially inferior or only backward or unfortunate? Just what is the relation of the immigrant to unemployment and American standards of living? What measure have we of the forces and motives which are making for immigration? What are our most effective assimilative agencies?

There are some signs of progress toward a fuller, truer knowledge of the subject. The statistics of recent emigration are a significant gain. Much may be hoped from the present temporary federal immigration commission which is now reporting. The growing attention to this subject in universities, settlements, and philanthropic organizations, as evidenced by the last program of the National Conference of Charities and Correction, is also reassuring. And the increasing emphasis on the protection of immigrants is making for a fuller knowledge of conditions. But, it is believed, two or three things are highly important for the effective and scientific study of this national problem. First, a still larger place should be given to immigration in our centers of learning, of social work, and of philanthropic effort. And secondly, there should be a permanent federal commission, or board of experts, properly coördinated with the other branches of government, and devoted to the scientific investigation of immigration in all its bearings. Such a body would make far more useful and perfect statistical information. It would insure continuity and consistency of public investigation. It would coöperate with all institutions and students engaged in this line of research. It would coördinate the efforts of officials and scholars everywhere. It could devise practicable plans for the thorough study of conditions abroad and supervise their execution. It

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could provide, what is now lacking, a sound basis of fact upon which to ground future legislation; and it would be in position to suggest lines of policy best calculated to subserve the highest interests of the nation. If we need a permanent tariff commission to insure scientific revisions of the tariff; if we need agricultural experiment stations for the improvement of our live stock and enlargement of our crops; if we need a permanent fish commission to safeguard the fish life of our nation; if, indeed, we believe in permanant commissions at all, why should we not have a permanent immigration commission to study this eternal question of the very sources of our population, that we may have scientific and statesmanlike revisions of our immigration laws?

Such a commission would seem to find justification in reason, in experience with analogous institutions, and in the favor which has greeted the tariff commission idea. It is urged, however, not as in itself affording a final disposition of the whole perplexing problem, but simply as a step toward a right solution. Indeed the conviction forces itself more and more upon the minds of men that, however scientific our methods, however perfect our organization, however enlightened our statutes, the true, the ultimate solution of the problem of immigration is not to be found in measures purely and strictly national. These must be supplemented by the largest coöperation: coöperation not only of the most wholesome and effective assimilative forces within our own country, but international coöperation as well. For, first of all, there are features of modern immigration with which no nation can cope single handed, unless it is prepared to adopt a policy of universal exclusion. The activities of transportation employment agencies, which are unscrupulously stimulating immigration, can never be regulated from the American end of the line alone. Our nation cannot defend itself against the pauper, the criminal, the morally unfit; because they defy detection at the hands of immigrant officers at our own ports, and any plan of inspection abroad must rest upon some measure of international coöperation. More than this, the movements of the defective, the dependent, the delinquent, the diseased, are matters of world concern; and their menace will never cease so long as

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nations pursue the policy of foisting their undesirables upon one another or of even permitting their unregulated movement from nation to nation. Besides, the migration of the desirable elements is often of as great industrial concern to the land from which they emigrate as to the land to which they come. The effect of recent emigration upon Italy, for example, has been the subject of much discussion in the past few years, and the Japanese statesmen who have favored restriction of emigration of their people to America have argued that their country suffers economically from such a movement. Then too, states through which migrations move and upon which they leave their trail, cannot long regard themselves as mere disinterested observers of a dramatic procession. And finally, may we not hope from international agreements, or international pressure, some amelioration of the conditions and some relief from the oppressions which have driven people from their native lands, and so some modification of the very causes of immigration?

Thus far our government has taken at least a few significant steps toward the adjustment of immigration difficulties through international coöperation. It has arranged for the inspection by United States officers stationed at leading Canadian ports of entry, of aliens from other foreign countries intending to enter the United States, thus facilitating the administration of our laws and also coöperating with the transportation companies in that region. Far more important is the fact that in 1908 our nation became a party to an international agreement for the suppression of the white slave traffic, an agreement formulated by the representatives of several European powers at Paris in 1904. Most far-reaching of all is the amicable adjustment of the question of Japanese immigration which must be accounted a triumph of international coöperation. For about two years, Japan has been regulating the movements of her people so effectively that the emigration of Japanese from this country far exceeds the immigration to America every month. In the immigration law of 1907, the President is authorized, in the name of the Government of the United States, to call, in his discretion, an international conference, to assemble at such point as may be

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agreed upon, or to send special commissioners to any foreign country, for the purpose of regulating by international agreement, subject to the advice and consent of the Senate of the United States, the immigration of aliens to the United States; of providing for the mental, moral, and physical examination of such aliens by American consuls or other officers of the United States government at the port of embarkation, or elsewhere; of securing the assistance of foreign governments in their own territories to prevent the evasion of the laws of the United States governing immigration to the United States; of entering into such international agreements as may be proper to prevent the immigration of aliens who, under the laws of the United States, are or may be excluded from entering the United States, and of regulating any matters pertaining to such immigration.

As yet no move has been made toward the calling of such a conference. But the mere enactment of this provision is prophetic of a time when our national measures for the regulation of immigration shall be far more generously supplemented by international coöperation.

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NOTES ON CURRENT LEGISLATION

CONDUCTED BY HORACE E. FLACK

Canadian Legislation, 1909. One of the most important matters of legislation enacted by the Canadian Parliament, during the session of 1909, was the law establishing the commission for the conservation of natural resources, (ch. 27, Statutes of Canada, 1909). The commission is composed of twenty members, appointed by the governor in council, in addition to the minister of agriculture, the minister of the interior, the minister of mines, and the member of each provincial government in Canada who is charged with the administration of natural resources of such province. Of the members appointed by the governor in council at least one member appointed in each province shall be a member of the faculty of the university of such province, if there be such university. The commission serves without fee or compensation except such expenses as are incurred in traveling to, or returning from, meetings of the commission. The duties of the commission are defined as follows: to take into consideration all questions which may be brought to its notice relating to the conservation and better utilization of the natural resources of Canada, to make such inventories, collect and disseminate such information, conduct such investigations inside and outside of Canada, and frame such recommendations as seem conducive to the accomplishment of that end. The officers and clerks of the commission shall be appointed under the civil service act, except such assistants employed for the purpose of any special work or investigation, such employment to terminate immediately upon the completion of the special work for which they were employed. The commission is to report at the end of each fiscal year to the governor in council and such report shall be printed and laid before both houses of parliament.

Parliament also created two new departments of the state government, the department of labour and the department of external affairs. The department of labour (ch. 22) is placed under the direction of the minister of labour, who receives an annual salary of $7000, and who shall be charged with the administration of the conciliation and labour act, and the industrial disputes investigation act, 1907, and such other duties

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as may be assigned to him by the governor in council. The department of external affairs, (ch. 13), is presided over by the secretary of state and is vested with power to transact all official business with foreign governments and all international and intercolonial negotiations, so far as they may appertain to the government of Canada.

Under the government annuities act, 1908, it was impossible to assign any interest in an annuity, but by an amendment, (ch. 4), made this year, a married man, who is an annuitant, can transfer a portion of his annuity, up to within one-half of the same, for the benefit of his wife, to be paid her during life, provided application for the same shall be made within three months of the time the annuity shall commence to be payable. The act was further amended to permit an annuitant to enter into an agreement with the government to dispose of the moneys due if the annuitant should die before the annuity becomes payable. Heretofore all money paid for an annuity automatically reverted to the heirs of the annuitant, in case of his death before the annuity became payable, but under this agreement he can make such disposition of the same as he desires.

New or increased powers were given the board of railway commissioners, (ch. 32), as follows: relative to complaints for breach of agreements, reissue of securities deposited or pledged for loans, grade crossings, fire protection along railroad rights of way, powers over foreign corporations owning railroads, annual reports, and speed of trains through cities, villages, etc. The board is also given power to fix the price of electricity, generated by water power, under lease from the crown, in disputes between lessee and applicants for the same (ch. 31).

The ship subsidies act was amended (ch. 36) to permit the governor in council to grant a subsidy of a maximum of $200,000 to any company maintaining a steamship service between Canadian and French ports, upon a minimum of fifteen round voyages per year. The minimum was formerly eighteen round voyages.

Numerous amendments were made to the criminal code (ch. 9) relating mostly to jurisdiction, court procedure, etc., and laws were enacted to provide for the inspection, registration, and to regulate the sale of commercial feeding stuffs (ch. 16); to prohibit the payment of secret commissions or bribes to agents or employes (ch. 33); authorizing a loan of ten million dollars to the Grand Trunk Pacific Railway Company for the completion of the prairie section of the transcontinental railway (ch. 19).

GEORGE L. CLARK.

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Canadian Legislation. A bill (no. 6) was introduced in the house of commons last November intended to prohibit book making and pool selling at race meets. As finally passed on April 15, 1910, the bill definitely legalized that very thing. Canada thus seems to have just reached the position from which New York advanced two years ago when the Agnew-Hart bills were passed. The new Canadian act is in the form of amendment to certain sections of the criminal code. The important clauses are in section 235 which defines what shall constitute an indictable offense under the preceding prohibitions "book making, pool selling, betting or wagering" upon the race-course of an incorporated association during the progress of a race meet and upon races being run. Race meets having running races are limited to seven continuous days and two meets a year with at least twenty days between; where there are trotting or pacing races exclusively, the race meets are limited to three days per week and to fourteen days in all in one year.

Another Canadian bill (no. 101) provides for the investigation of "combines, monopolies, trusts and mergers" which increase prices or reduce competition. Any six persons who are willing to make declarations they believe such a combine to exist may make application to a judge for an order of investigation. The judge shall hold a hearing upon the application and if he finds such an investigation should be held he shall transmit such an order to the registrar of boards of investigation, an officer to be designaged by the governor in council. Thereupon the minister of labour shall appoint a board of three members, one nominated by the applicants, one by the persons alleged to be concerned in the combine, and the third (a judge of a court of record and chairman of the board) by these two. "The board shall expeditiously, fully, and carefully enquire into the matters referred to it and all matters affecting the merits thereof," and report to the Minister. If it shall appear to the satisfaction of the governor in council that a combine exists and that such combine is facilitated by a tariff duty, he may annul or reduce such duty. If a holder of a patent uses the same in undue restraint of trade, the patent is liable to be revoked. Any person reported guilty of restricting manufacture, trade, or competition and who continues to offend after the report is subject to penalty. Provisions are made for the conduct of meetings or sittings of the board, the attendance of witnesses and the taking of evidence.

C. B. LESTER.

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Insurance—New York. New York continues to maintain her recently achieved preëminence in insurance legislation. An investigation of town and country coöperative fire insurance corporations; proceedings against certain coöperative live stock, and coöperative fire insurance, corporations, and Lloyds associations; the reinsurance of a prominent life insurance company in a company not hitherto licensed in the state; two judicial interpretations of the expense limitation imposed upon life insurance companies; revelations of mismanagement of certain fire insurance companies; and the realized inconveniences of the limitation upon the volume of a company's new business,—are among the important events which have called forth substantial amendments to the insurance law, this year.

Assembly bill 1287 (chap. 168 of the laws of 1910) applies to all insurance companies the regulation already imposed upon life companies, requiring the advance approval by the superintendent of any scheme involving a reinsurance of substantially all the risks of any company. The assuming company must maintain on account of such risks, the same reserve as would have been required of the ceding company.

Assembly bill 2402 (chap. 328 of the laws of 1910) regulates, and provides for the supervision by the superintendent of coöperative fire insurance corporations. An advance premium corporation may not transact business in more than five adjoining counties until its insurance in force amounts to one million dollars, while assessment corporations are confined to the town or county of domicile until certain limits are reached, after which the limits are somewhat enlarged. There are detailed provisions to govern the conduct of business of these companies.

Assembly bill 847 (chap. 318 of the laws of 1910) prohibits the further incorporation of assessment live stock concerns.

Senate bill 1501 (chap. 634 of laws of 1910) amends many sections of the insurance law. It forbids loans as well as gifts from insurance companies to the superintendent or any of his subordinates, and the prohibition is extended to gifts or loans from officers of directors of companies. Fraternals are deprived of their exemption from the necessity of a license from the superintendent. In addition to the minimum capital stock required, a new company must hereafter begin with a surplus of 50 per cent thereof, fully paid in cash. Real estate mortgages are withdrawn from the list of securities available for purposes of deposit, and deposits of foreign companies in other states are credited under the customary terms of reciprocity. The amortization rule for the valuation of securities is amended so as to apply regularly to life companies only, which,

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however, still retain the right to report market values or book values if not in the aggregate higher than the amortized values, while on the other hand, other insurance corporations doing business in the state may be required by the superintendent to report amortized values whenever he deems the requirement desirable. Marine insurance business is relieved from the limitation of risk upon a single hazard. Companies of other countries, authorized to write fire insurance in New York, are authorized to write marine business also, by making additional deposits. Companies of other states are no longer forbidden to remove causes to federal courts. The required triennial examinations of domestic life insurance companies are retained, but other insurance companies are subjected to quinquennial examinations.

By senate bill 1485 (chap. 668, laws 1910) a "combination standard form" of policy is established for the joint use of two or more fire underwriting corporations, subject to the approval of the superintendent.

One of the most important enactments is senate bill 1645 (chap. 638, laws of 1910), regulating "Lloyds" and interinsurers. Many informal associations, some of them wholly irresponsible, have long transacted business in imitation of Lloyds of London, and have escaped a proper supervision. These are now brought under regulation. Only such Lloyds as are now licensed are to be permitted to operate. These must file applications, submit verified statements, acknowledge the joint legal liability of their members, secure permission from the superintendent, submit to regular examinations, maintain in reserve all unearned premiums, and each individual underwriter must be worth at least $20,000.

Senate bill 1459 (chap. 636) prescribes standard provisions for health and accident policies. During the past year this subject has been prominent in the discussions of insurance commissioners, and the opinion has prevailed that prescribed provisions are hardly less expedient in the case of health and accident policies than in life and fire policies.

By assembly bill 2176 (chap. 616), McClintock's Tables of Mortality among annuitants, at $3\frac{1}{2}$ per cent are made the minimum standard in the valuation of annuities, and the American experience table, $3\frac{1}{2}$ per cent, the minimum for industrial business, but companies may substitute for the latter the standard, or the substandard, Industrial Mortality Table.

By assembly bill 2617 (chap. 697), special deposits to secure registered policies and annuity bonds are discontinued, the scheme of securing a public guaranty of contracts having proved less popular than had been anticipated. By the same bill, the limitation upon the amounts of new

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business which domestic life companies may write, is amended so as to allow a little more latitude, and so as to permit the arbitrary limit of $150,000,000 to be avoided, provided the increase is accomplished with considerably stricter economy than would otherwise be legally required. All the limitations upon volume are now applied to foreign as well as domestic companies. The same bill amends the limitation of expense of life insurance companies, in order to obviate difficulties caused by judicial interpretations. One change makes it clear that the limitation is a company matter and not an agency matter. The other change permits companies to claim credit for only such mortality gains as arise upon policies still in force. Finally, agents' compensation in other forms than commissions and collection fees is recognized, but the superintendent must be satisfied that the expense limitations will not in this way be exceeded.

The enactment of these laws deserves somewhat more recognition than a formal notice of the most important changes. Nearly all of them enact "administration" bills. Thus, before retiring from office, Governor Hughes has been able, with the coöperation of a trusted appointee, Superintendent Hotchkiss, to bring to a virtual conclusion the insurance reforms with which his reputation as a public servant has been so peculiarly identified. It is unlikely that the revision of the insurance laws will cease, but the legislation of this year is of special interest because it marks the removal of the last serious hardships of the Armstrong legislation, and the substantial extension of the Armstrong reforms to branches of underwriting other than life insurance.

WM. H. PRICE.

Legislative Reference. On May 13, Governor Harmon of Ohio, approved a law providing for a legislative reference and information department in connection with the state library. The head of the department is to be appointed by the board of library commissioners and it is stipulated in the act that he be a person well fitted by training and experience to fill the requirements of the office and that he shall perform all the duties prescribed in the act, as well as such other duties as the board of library commissioners and the general assembly may prescribe. It is also stipulated in the act that the legislative reference librarian shall, as soon as possible, make available for ready reference and use suitable indices to all such information as is contained in the public documents of the state and shall keep a complete file of all bills printed by order of either house of the general assembly. It is also made the duty of the

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librarian to procure and compile in suitable and convenient form, for ready reference and access, information on current and pending legislation in other states and countries to the end that any member of the general assembly or any citizen of the state may have the benefit of such service. When so requested, he is required to aid members of the general assembly in the preparation and formulation of bills.

For a complete list of legislative reference departments, *See* POLITICAL SCIENCE REVIEW, May, 1910, p. 218.

Municipal Charter Revision—Memphis. Memphis has experienced some difficulty in securing a new charter. In 1907 the legislature passed a charter or charter amendment providing for the commission form of government, but the measure was declared unconstitutional, seemingly on a technicality. Apparently not to be thwarted, the legislature was appealed to and another act was secured. Memphis thus joins the ranks of those cities which are trying to secure efficient government by resorting to small governing bodies. Thus far Memphis is the largest city which has adopted the commission form, having a population of over 130,000, and the experiment there will no doubt be watched all the more closely by the larger cities where changes are being contemplated. The mayor under the new charter was elected last November, but in order to avoid the danger of having the measure declared unconstitutional, the four members of the legislative council whose terms do not expire until November, 1911, are made members of the board of commissioners. The people will not have an opportunity, therefore, to elect the full commission until 1911.

All the powers now exercised by the present legislative council, the fire and police commissioners, and the board of public works are to be exercised by the commissioners, together with additional powers conferred by the new charter. The mayor is made head of the department of public affairs and health, but the other four commissioners are to be assigned to be the heads of the following departments: department of fire and police, department of streets, bridges and sewers, department of accounts, finances and revenue, department of public utilities, grounds and buildings.

The scope of the several departments is stated quite at length, the various departments of the city government being placed under the jurisdiction of the appropriate commissioner. For example, the commissioner of public utilities has control of all affairs connected with street railways, gas and electric light companies, etc. The commissioners must

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meet at least once a week and all the meetings must be public. No officer or subordinate officer of the city shall be interested in any way in any contract with the city.

The commissioners are given power to require the attendance of witnesses, the production of books, papers and documents, and to take and hear testimony concerning any matter pending before them. This would seem to confer very broad powers, for it would apparently include any matter of legislation, such as the granting of any franchise, etc.

Aside from the creation of the board of commissioners, the most important provision related to civil service. Within ninety days after organization, the commissioners must elect a civil service commission consisting of three members, each to serve for three years, though a method is provided whereby one shall be elected every year. It requires a vote of four commissioners to remove a member of the civil service commission, and such removal must be for cause. Examinations are to be held to determine the qualifications of applicants for positions under the city government, but such examinations must be practical and solely for the purpose of testing the fitness of the persons examined to discharge the duties of the position to which they seek to be appointed. The commission is required to furnish, as soon as possible after the examinations, to the board of commissioners double the number of persons necessary to fill the vacancies, the persons standing highest in the examinations for the positions to be certified. All vacancies which occur, that come under civil service regulations, prior to the next regular examination, must be filled from the certified list.

All persons appointed under civil service examinations are subject to removal by the board of commissioners or by the commissioner of the particular department for misconduct or failure to perform their duties. The chief of police, chief of fire department, superintendent of health, or any superintendent or foreman in charge of municipal work may peremptorily suspend or discharge any subordinate for neglect of duty or disobedience of orders, but must within twenty-four hours report in writing such suspension or discharge and the reason therefor to the commissioner in charge of his department who must affirm or revoke such discharge or suspension according to the facts. An appeal to the board of commissioners, however, from this ruling may be taken within five days by either party.

Any commissioner may cause the civil service commission to examine any employee or employees in his department to determine his fitness and qualifications to fill his position. The result of such examination

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must be reported to the commissioner who requested the examination and he must retain or discharge the employee or employees according to the results of the examination. This seems to be an unusual feature, since it is seldom if ever found in any of the civil service laws.

There is a provision requiring all franchise ordinances to be published in a daily paper at least three times, each of said publications to be on the day prior to the meeting at which each passage of the ordinance occurs.

Memphis has not followed the more recent charters in regard to the initiative and referendum, but has incorporated a provision for the recall of elective officials. A petition signed by qualified voters equal to 25 per cent of the vote cast for mayor at the last preceding election makes it incumbent on the board of commissioners to order and fix a date for holding the recall election. The election must take place not less than thirty nor more than forty-five days from the certification of the city clerk that the petition is sufficient. The officer sought to be removed shall be regarded as a candidate for reëlection unless he requests otherwise in writing. The recall cannot be invoked against any official until he has held office for three months, nor can he again be subjected to a second recall before six months after the first. The revised charter went into effect January 1, 1910.

Municipal Charter Revision—Buffalo. Buffalo is considering the question of revising her charter, or rather of securing a new one. In November, 1908, the people, under authority of what is known as the public opinion ordinance, voted for a new, simplified, home rule charter. To carry out the will of the people as expressed at the poll, the Referendum League caused to be drafted a proposed charter which was submitted to the people in November, 1909. Buffalo, like most eastern cities, has no power to adopt its own charter but can only let the legislature know what it desires. That was the purpose of the election in November. In order to get the proposed charter before the people under the public opinion ordinance, over 4000 voters had to sign a petition to that effect.

The charter as drafted by the Referendum League was approved by the Civic Conference of Buffalo, the Builders Exchange, the West Side Business Men's Association, the Black Rock Business Men's Association, the Referendum League, and the committee of 100 citizens representing every ward of the city. The Civic Conference was composed of the representatives of most of the civic and business organizations

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of the city. There was not a full vote on the proposed charter, but it was approved by a decisive majority.

Buffalo is the largest city which has proposed to adopt the commission plan of government. The proposed charter is modeled very closely after that of Des Moines. Buffalo at present has a bicameral council, one branch composed of twenty-five members, one from each ward, and the other of nine members. Under the proposed plan there will be a mayor and four councilmen, the mayor to be the presiding officer. As in Des Moines and the other cities under commission government, each of these five elective officers will be the head of a department and will be responsible to the council for the administration of his department. The five departments of the municipal government are as follows: department of public affairs, department of accounts and finances, department of public safety, department of streets and public improvements, department of parks and public property. The mayor is head of the department of public affairs, each of the councilmen being designated as the head of one of the other departments.

The mayor and four councilmen are to be nominated and elected at large for a term of four years. Candidates can be nominated by petition only, the requirement being that 1000 voters must sign a petition of nomination. The names of all candidates so nominated must be printed in all of the daily papers for three successive days within ten days of the filing of the petitions. The names of all candidates for mayor are to be placed alphabetically in one column of the official ballot, and all candidates for councilmen in similar order. The voter will be required to vote for each candidate separately and not for the whole list by a turn of the lever. There will be no party column nor any party emblem. Voting machines are used in Buffalo.

The salary of the mayor is fixed at $7500 and that of the councilmen at $6000. The council chooses all the important officers and may by a majority vote remove them except as otherwise provided by law. The mayor has no veto, but every ordinance must be signed by him or by two councilmen before becoming effective.

Any elective officer may be removed at any time by the electors qualified to vote for a successor to him. The provision in reference to the recall requires a petition signed by electors equal to at least 25 per cent of the entire vote cast for the candidates for mayor at the last preceding general municipal election. The petition must contain a general statement of the grounds for which the removal is sought. The council is required to fix a date for the recall election not less than thirty nor more

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than forty days from the certification of the commissioner of election that the petition is sufficient. The candidate sought to be removed is to have his name placed on the ballot unless he requests otherwise in writing. It is thus proposed that Buffalo follow the example set by Los Angeles, Des Moines, Colorado Springs, and other western cities. Memphis was the first city, certainly of any importance, east of the Mississippi to incorporate such a provision, and if the charter is adopted, Buffalo will be the largest city in the United States to try it.

The recall and commission plan are not the only new features proposed for the city, for the initiative and referendcm also find a place. A petition signed by electors equal to 25 per cent of the vote cast for mayor at the preceding general election is sufficient to require the council either to pass the ordinance accompanying the petition without alteration within twenty days or to call a special election (unless a general municipal election occurs within ninety days) for its submission to the people. A petition signed by 10 per cent of the electors as above is sufficient to secure the passage of a proposed ordinance within twenty days or require its submission to the people at the next general municipal election. Any number of ordinances may be voted upon at the same election, but there cannot be more than one special election in any period of six months. Any ordinance required to be submitted to the people, either by the initiative or the referendum, must be published in each of the daily newspapers not more than twenty nor less than five days before it is to be voted upon.

No ordinance passed by the council (unless otherwise required by the general laws of the state) except an ordinance for the immediate preservation of the public peace, health or safety and which contains a statement of its urgency and receives a two-thirds vote of the council (four of the five votes), shall go into effect before ten days from the time of its final passage. If within this time a petition signed by 25 per cent of the voters, as in the case of the initiative and recall, protesting against its passage be presented, the ordinance is suspended and the council is required to reconsider its action. Unless the ordinance is entirely repealed by the council it must be submitted to the voters either at a general election or a special election called for that purpose. The people are thus given the power to compel action by the council on any measure and the power to veto any legislation by the council which they deem unwise.

A very broad grant of power to the city is proposed, giving the city full and complete control over purely local affairs. Under the proposed charter the city can construct wharves, piers, canals, gas mains, con-

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duits, construct and operate waterworks and a lighting plant for the city and its inhabitants. Complete control is given over the streets and highways of the city and the city may do anything necessary for its beautification or to preserve or add to the safety, comfort and well-being of its inhabitants. The city is also given power to establish a system of pensions in the police, fire and school departments without resorting to the legislature for special grants of power.

The proposed charter introduces a new feature in that it is provided that the people of any ward may vote upon all questions which affect their ward only upon filing a petition signed by 5 per cent of the registered voters of the ward.

No public utility franchise shall be valid until it is authorized or approved by a majority of the electors voting thereon at a general or special election. The cost of the special election for this purpose must be borne by the corporation seeking the franchise.

There is a provision requiring that the expense of constructing sewers, sidewalks, and paving streets shall be defrayed by local assessment. In case of repaving streets, two-thirds of the cost is assessed against abutting property owners and one-third is paid by the city. The city is given power to issue bonds without securing the permission of the legislature in each particular case.

Great Britain—Legislation. Among the public general acts passed by parliament at the last session were the following which seem worthy of notice in this department:

An act providing for the establishment of labor exchanges by the board of trade, which may also assist exchanges established and maintained by other authorities, and may also "by such other means as they think fit" endeavor to bring the employer needing help and the workman needing employment together.

The act to constitute the Union of South Africa.

An act to prohibit gambling on loss by maritime perils. It is so worded as to cover all persons effecting insurance on vessels or cargoes without having bona fide insurable interest therein, but is said to be chiefly directed against a class specifically named, employees of ship owners who are said to have trafficked in this sort of insurance. The penalty is directed not only against those persons effecting such contracts but also against brokers through whom the insurance may be taken.

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An act to enable the London county council to establish an ambulance service in the metropolitan district for cases of accident or illness (other than infectious diseases).

An act protecting Irish handloom weavers and their products by requiring the trademark "Irish hand-woven" to be stamped upon or woven into goods actually so made and imposing penalty for misuse of this trademark.

An act establishing trade boards in certain scheduled trades (tailoring, paper box making, machine lace finishing, hammered chain making), and providing that it may be extended to other trades by order of the board of trade. The boards may fix minimum wage rates for piece work and shall do so for time work, and such rate may be made obligatory by the board of trade. Non-compliance in the latter case is made subject to penalty. The act contains detailed regulations as to the constitution and proceedings of the boards, and enforcement of its provisions.

An act relative to the licensing of premises and persons for the exhibition of moving pictures.

An act providing for Ireland supervision and requirements for the destruction of noxious weeds, and for the examination and testing of agricultural seeds.

An amendatory act relative to electric lighting, which empowers the board of trade to authorize local authorities or electricity companies to acquire compulsorily any land needed for generating stations. Authority may be given to break up streets to bring electricity within an area of supply from an outside generating station, and to supply electricity in bulk and the latter may be made compulsory upon the undertaker. The act contains 27 sections and includes much important matter.

A general housing and town planning act (76 sections and schedules). The act of 1890 is extended to all places which have not already adopted it voluntarily. Powers are given for the compulsory acquisition of land for housing and town planning schemes by local authorities who may borrow money needed in the development of such schemes. Town planning schemes may include property already built upon and general provisions may be outlined by the Local Government Board to cover the various phases of the question which must be considered in a comprehensive plan. These are set forth in detail in schedule 4.

An act which among other provisions constitutes a road board, under the treasury, for the administration of general road improvement funds and for giving advice and instruction to local authorities.

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An act providing for superannuation allowances to employees in public insane asylums. The scheme involves contribution by such employees to be deducted from wages.

An important insurance act which both consolidates and amends former laws and extends to other companies the laws relating to life insurance companies. It covers such matters as deposits, accounts, reports and statements, audit, consolidation, and re-insurance. The act sets forth details of application to life, fire, accident and employers' liability insurance companies, bond investment companies, and collecting societies and industrial insurance companies.

C. B. LESTER.

Porto Rico—Legialation. Among the laws passed at the recent session of the legislative assembly, the following may be noted:

An act to create an insular fair board for the purpose of holding an annual exhibition of agricultural and general productive industries of the island.

Creating a special medical service for the study and prevention of tropical and transmissible diseases.

An automobile law requiring the licensing both of vehicles and drivers, fixing a speed limit within municipalities and providing that speed limits elsewhere shall be regulated by the commissioner of the interior, giving lighting and signal regulations, and providing that upon signal from the driver of a frightened horse the autoist shall come to a full stop and stop his motor.

An act providing for the appointment of two commissioners upon uniform legislation.

An act regulating bill posting and out door advertising. All such advertising upon public property is entirely prohibited, certain objectionable advertising is prohibited, bill boards within municipalities (unless placed against walls) are limited to 10 feet in width by 10 feet in height, and all advertising matter displayed on property adjoining the public roads is subject to a tax of fifty cents a square meter annually. Advertisements of business firms as displayed upon their own business premises are exempted from the size limitation and from the tax.

An act appropriating $8000 to be expended by the Anti-Tuberculosis League in combating the spread of tuberculosis, and $2000 to be expended "in organizing an educational campaign for the prevention of the spread of tuberculosis and in public instruction in the elementary principles of sanitation." C. B. LESTER.

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NEWS AND NOTES

Personal and Bibliographical

W. F. DODD

Prof. Roscoe Pound of the University of Chicago has been appointed Story professor of law at Harvard University.

Prof. Albert Bushnell Hart, until recently professor of history, has been appointed Eaton professor of the science of government in Harvard University, a position formerly occupied by President A. Lawrence Lowell.

Prof. George Grafton Wilson of Brown University will next year become professor of international law in Harvard University.

Assistant Prof. L. E. Aylsworth of the University of Nebraska has been promoted to an associate professorship.

Dr. A. R. Hatton of Western Reserve University has been advanced from an associate professorship to a professorship of political science.

Dr. Karl F. Geiser of Oberlin College has been promoted to a professorship of political science.

Dr. C. H. McIlwain of Princeton University has accepted the professorship of history and political science in Bowdoin College.

Prof. William H. Glasson of Trinity College (N. C.) will be acting professor of economics and politics at Cornell University during the next year. Prof. J. W. Jenks will spend the year in Europe.

At the College of the City of New York, Associate Prof. Walter E. Clark has been promoted to the professorship of political science; Dr. Howard B. Woolston, a doctor of Columbia University, becomes instructor in political science; Dr. Walter L. Whittlesey, recently of Princeton University, also goes to the City College next year.

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President John H. Finley of the College of the City of New York will lecture at the Sorbonne next year, taking as his subject the development of the West.

The Dodge lectures on the Duties of Citizenship will be given at Yale University next year by the Rev. Lyman Abbott of New York.

Prof. Paul S. Reinsch of the University of Wisconsin is to be the Theodore Roosevelt professor of American history and institutions in the University of Berlin for the year 1911-12. Prof. Reinsch will lecture upon the subject of the Expansion of the United States.

Dr. Chester Lloyd Jones of the University of Pennsylvania has been appointed associate professor of political science at the University of Wisconsin. Dr. Ellery C. Stowell of George Washington University has been called to the University of Pennsylvania and will take the place left vacant by Dr. Jones.

To the recently established chair of political science and constitutional law at the University of Pittsburgh, Prof. Francis Newton Thorpe has been elected, with leave of absence for a year, which he will spend abroad, chiefly in Germany.

President Edmund J. James of the University of Illinois is secretary and Prof. John A. Fairlie is chief clerk of the recently appointed Illinois state tax commission. It may be remembered that Prof. Charles E. Merriam of the University of Chicago is a member of this commission.

Goldwin Smith died at Toronto on June 7, at the age of eighty-seven years. For more than fifty years he had been a prominent figure on both sides of the Atlantic, but he will probably be remembered best because of his championship of the North in England during the Civil War, and by his persistent but unsuccessful efforts to bring about a union between Canada and the United States. From 1858 to 1866 he was regius professor of modern history at Oxford, and from 1868 to 1871 he occupied a professorship of history at Cornell University.

Prof. William Graham Sumner of Yale University died at Englewood, N. J., on April 12 Although most widely known as an economist and sociologist, Prof. Sumner wrote frequently upon political questions,

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and his loss will be felt by all students of the historical and social sciences. Prof. Sumner was seventy years of age, and had been a professor at Yale since 1872.

A new department of citizenship has been created at the University of Rochester. Plans for the new department have been placed in charge of Mr. Howard T. Mosher, who was formerly professor of French in Union College, but who is now a lawyer in Rochester; Mr. Mosher is chairman of the Democratic county committee, and was largely responsible for the recent defeat of George W. Aldridge. In the work of the new department municipal administration is to be emphasized.

A fund of $100,000 has been raised to be called the "Richard Watson Gilder Fund for the Promotion of Good Citizenship," and will be employed for the establishment at Columbia University of several "Gilder fellowships," the holders of which will be required to devote themselves to the investigation of actual social and political conditions and to engage in practical civic work.

The Harvard University Law School has established the degree of "juris doctor." This degree will be given to graduates of approved colleges for one year's work in addition to that required for the degree of bachelor of laws. The additional year's work is intended primarily for those who plan to become teachers of law or legal writers, or to specialize in international or foreign law. For this fourth year of legal work courses will be given next year at Harvard on Roman and comparative law, administrative law, history of the common law, international law, jurisprudence, and theory of law and legislation.

A meeting of the Institut de droit international was held at Paris, March 28-31. The principal matters laid before the Institut were: neutrality and the obligations of neutrals with respect to maritime asylum; the use of torpedoes and mines; and some questions relating to private international law. With respect to the stay of belligerent warships in foreign ports the strict English and American theory of a twenty-four hour rule met with little acceptance. The next meeting of the Institut will be held at Madrid, Easter, 1911.

The American Philosophical Society announces that an award of the Henry M. Phillips prize will be made in 1912. The prize of $2000 will be awarded to the best essay submitted upon the subject: The Treaty-

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making Power of the United States, and the Methods of its Enforcement as affecting the Police Powers of the States. Essays submitted should contain not more than 100,000 words, exclusive of notes and must be presented before January 1, 1912. No essay is entitled to compete for the prize that has already been published, or for which the author has already received any prize, profit, or honor. Further information regarding the prize may be obtained from W. W. Keen, President of the American Philosophical Society, 104 South Fifth Street, Philadelphia.

The fourth annual meeting of the American Society of International Law was held at Washington, April 28-30, 1910. Practically the whole meeting was devoted to the subject of the protection of citizens residing abroad. The presidential address was delivered by Senator Elihu Root, and papers were read by Profs. Paul S. Reinsch, G. W. Scott, Raleigh C. Minor, John H. Latané, Theodore S. Woolsey, Eugene Wambaugh, Messrs. Edwin M. Borchardt, Arthur K. Kuhn, R. Floyd Clarke, C. L. Bouvé, Walter S. Penfield, Hon. Charles Nagel, Hon. T. C. Dawson, President James B. Angell, and President Harry Pratt Judson.

The sixteenth annual meeting of the Lake Mohonk Conference on International Arbitration was held on May 18-20. Addresses were made by President Nicholas Murray Butler, Prof. Paul S. Reinsch, Prof. J. B. Scott, Judge Simeon E. Baldwin, Baron D'Estournelles de Constant, and a number of others. The printed proceedings of the meeting will be out in the near future.

The pending action of Russia with reference to the withdrawal of Finnish autonomy was the subject of an international conference of jurists during last March. Those who took part in this conference were Gerhard Anschütz, L. von Bar, A. de Lapradelle, Ernest Nys, Léon Michoud, Sir Frederick Pollock, W. van der Vlugt, and John Westlake. A declaration was issued in favor of Finnish autonomy, and against the Russian proposal which will practically deprive Finland of self-government.

An international hygiene exhibition is to be held at Dresden, May-October, 1911. A section of the exhibition will be devoted to settlements and dwellings, and will relate largely to city planning, water supply, and other subjects particularly within the field of municipal sanitation.

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The International Law Association will hold its next meeting in London during the first week in August. Among the subjects to be discussed are divorce, international road regulation, the declaration of London, comparative criminal procedure, workmen's compensation, and general average.

The International Prison Congress meets at Washington, October 2 to 8, and will be attended by a number of distinguished foreign representatives. The American Prison Association will hold its meetings at Washington, on September 30 to October 1.

The *Proceedings* of the 1909 meeting of the National Civil Service Reform League (New York, 1909, pp. 180) present a review of the year's progress in civil service reform. The volume also contains interesting addresses on the civil service law in the Philippines, by Hon. W. S. Washburn; the civil service law in Porto Rico, by Hon. Harry C. Coles; the application of civil service rules to fourth class postmasters, by A. K. Hoag; and the merit system and the census, by E. Dana Durand.

Fifty Years of New Japan, compiled by Count Shigénobu Okuma (London, Smith, Elder, 2 vols.), contains papers on the grant of the constitution, the history of political parties in Japan, foreign relations, legal institutions, police, local and municipal government, and the administration of Formosa.

The Bureau of Corporations has issued a report on *Taxation of Corporations. Part II—Middle Atlantic States* (Washington: Government Printing Office. Pp. xiii, 115). This report, like the previous one on the New England States, is a careful digest of the laws concerning corporate taxation, together with an indication of the character and amount of revenue derived from such taxation by the several states.

A. W. Chaster's *The Law relating to Public Officers* (London, Butterworth, 1909, pp. cxxviii, 708, 71), is in the main an annotated digest of English statutes regulating the powers, duties and liabilities of public officers. It will be of value to those interested in English administration.

Harry C. Barnes' *Interstate Transportation* (Indianapolis, Bobbs-Merrill, pp. xxxiii, 1250) is a technical treatise on the federal legislation for the control of interstate transportation, and contains little dis-

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cussion of constitutional principles involved in such control. The object of the book is to present "the laws, rules, and regulations governing the transportation of passengers and property under the Interstate Commerce Act as it now stands."

The Law Relating to Intoxicating Liquors, by Howard C. Joyce (Albany: Matthew Bender, pp. cx, 840). This is an elaborate treatise upon the control of the liquor traffic. The constitutional principles involved are discussed at length, as well as the questions involved in the administrative enforcement of liquor laws.

The April, 1910, number of the *Journal of the Society of Comparative Legislation* contains the annual review of legislation in the British empire. There are also a number of valuable articles.

The July, 1910, number of the *Annals* of the American Academy of Political and Social Science is devoted to the subject of the administration of justice in the United States. The subjects dealt with are: treatment of the accused and the offender; juvenile courts and the treatment of juvenile offenders; the scope and limits of the injunction; the administration of the criminal law; and respect for law in the United States.

Prof. Rudolf von Herrnritt's *Handbuch des oesterreichischen Verfassungsrechtes* (Tübingen, J. C. B. Mohr, pp. xiv, 276), presents a brief but clear account of Austrian constitutional law; the discussion of existing institutions is preceded by a short historical treatment of the subject.

Das Budget-Privileg des Hauses der Gemeinen, by Dr. S. Sussman (Mannheim, Benscheimer, 1909, pp. ix, 216), is a careful historical study of the development of the power of the English House of Commons over budgetary legislation.

Beginning with volume twenty the *Zeitschrift für internationales Privat-und Oeffentliches Recht* (Leipzig, Duncker und Humblot) becomes the *Zeitschrift für internationales Recht*. Dr. Theodor Niemeyer remains the editor, and the journal will continue to devote itself to the fields of both public and private international law.

Those familiar with *A Diary of Two Parliaments* and with other works of a similar character by Henry W. Lucy will be interested in Charles T. King's *The Asquith Parliament* (London: Hutchinson, pp. viii, 351).

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Mr. King's gossipy and anecdotal book gives one many points regarding parliamentary procedure and the personal relations of parliamentary leaders, which supplement the accounts found in weightier discussions.

A Colonial Autocracy by Marion Phillips, (London, King, 1909, pp. xxiii, 336) is a doctoral dissertation at the University of London, and deals with the administration of Governor Macquarie in New South Wales from 1810 to 1821. The volume deals with the period of transition of New South Wales from a penal settlement to a free colony and with the steps leading up to the establishment of representative government.

Among the important state documents which have appeared recently are the report of the Massachusetts commission on old age pensions, annuities, and insurance (pp. 409); the first report of the New York commission on employers' liability, together with the minutes of evidence accompanying the report (pp. 271 and 470); and a publication issued by the West Virginia department of archives and history containing the proceedings of the convention of 1861 which led to the formation of the state of West Virginia.

The *Second Annual Report of Reforms and Progress in Korea* (Seoul, December, 1909, pp. viii, 215) has been issued, and forms a complete official record of Japanese administrative activities in Korea during 1908.

Responsible Government in the Dominions, by Arthur Berriedale Keith (London: Stevens and Sons, 1909, pp. vii, 303). Since the second edition of Alpheus Todd's *Parliamentary Government in the British Colonies* in 1894 there has been no satisfactory study of responsible government in the British colonies, although the lapse of time has rendered Todd's work less and less valuable. Mr. Keith has now sought to fill the want of a book dealing with this subject, and it may be said that he has succeeded, although his work would be of greater value were it not for its undue compression. The chapters on the federations and on treaty rights are particularly valuable, but in his discussion of the federal governments of Canada and Australia the author does not emphasize sufficiently the function of the courts as organs for the prevention of conflict between federal and local legislation.

La jurisdiction internationale des prises maritimes, by Charles Ozanam (Paris: Larose et Tenin, pp. xvi, 317). This is a study of the movement

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leading up to the establishment of an international prize court by the second Hague conference. M. Ozanam discusses earlier projects for the establishment of such a court, particularly that of the Institut de droit international, and the work of the conference. He is strongly in favor of turning over to an international court the adjudication of prizes in the first instance, and of depriving the interested country of all control over the matter. Two other studies of prize jurisdiction have also been issued recently: *La jurisdiction des prises maritimes*, by Aymé Berthon (Paris, Pedone, pp. 255); and *Le jugement des prises maritimes*, by René de Caqueray (Rennes, Prost, pp. 264).

Das Beuterecht im Land-und Seekriege, by Hans Wehberg. (Tübingen, 1909, pp. xii, 135. Abhandlungen aus dem Staats-, Verwaltungs-, und Voelkerrecht). Dr. Wehberg has written a careful and thorough treatise upon prize law. He traces the doctrine of naval prize from earlier times through the developments at the London conference, and optimistically concludes that the principle of prize must give way before the opposition of the commercial world. The author suggests two reforms which he thinks may be accomplished in the near future: (1) The compensation by the state of those of its citizens who may suffer loss through the operation of the principle of prize. (2) That ships and cargoes captured as prize should not be condemned but should be held until the end of the war and should then be returned to their owners.

The Dethronement of the City Boss, by John J. Hamilton (New York, Funk and Wagnalls, pp. 285), is a highly enthusiastic and in the main uncritical discussion of the commission system of city government, devoted almost entirely to the experience of Des Moines. There is no really satisfactory discussion of the system, and in the chapter on Interesting Modifications of the Galveston-Des Moines Plan, the author fails to point out clearly the modifications made in the commission system by a number of the cities which have adopted it. But it should be said that the author's purpose has been primarily that of describing the experience of Des Moines.

The fifth edition of Esmein's *Eléments de droit constitutionnel français et comparé* (Paris, Larose et Tenin, 1909, pp. xv, 1154), is an enlarged and thoroughly revised work which comes up to the high standard already set in earlier editions. Several new chapters have been added and the fifth edition exceeds the fourth in bulk by more than 180 pages.

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The discussion of questions of present moment has been carefully revised, and the work shows a thorough familiarity with constitutional events occuring at the time when it went to press.

Dr. Roswell C. McCrea's *The Humane Movement* (New York, Columbia University Press, pp. vii, 444), is primarily a study of the movement in the United States for the prevention of cruelty to animals, although there is also some treatment of the subject of cruelty to children. Appendices give the text of typical laws, lists of existing organizations, a full bibliography of the subject, and other information with reference to the movement. Two elaborate tables summarize fully the legislation of the several states and territories for the protection of animals and of children. Dr. McCrea's volume was prepared on the Henry Bergh Foundation for the Promotion of Humane Education in Columbia University.

The third edition of Henry Campbell Black's *Handbook of American Constitutional Law* (St. Paul, West Publishing Company, pp. xxviii, 868), appeared recently. The second edition appeared in 1897 and the work now seems to have been brought pretty thoroughly up to date, the inclusion of new subjects and later decisions involving a considerable increase in its bulk. In the revision special attention has been devoted to the new developments in the industrial world, such as railroad rate regulation, labor legislation, boycotts, etc. The insular cases are inadequately treated.

Le Prisonnier de guerre dans la guerre continentale, by Armand du Payrat (Paris, A. Rousseau), is a discussion of all questions relating to prisoners of war, written by a former army officer. M. du Payrat discusses (1) who may be taken and held as prisoners, (2) the treatment of prisoners, and (3) the termination of imprisonment by liberation, exchange, or the conclusion of peace. The work is rendered valuable by its discussion of practice in recent wars and by its comparative study of military regulations issued by various countries with reference to prisoners of war.

Prof. Gaston May of the University of Paris has published an interesting volume under the title *Le Traité de Francfort. Étude d'histoire diplomatique et de droit international* (Paris: Berger-Levrault, 1909). M. May examines in a careful and thorough manner the subject of the treaty itself and of the supplementary conventions entered into in connection

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with the payment of the indemnity exacted from France by Germany. He also considers the questions arising in connection with the German occupation, and with the cession of territory by France to Germany. The volume is an important contribution to diplomatic history, and may be considered perhaps as a definitive treatment from the French point of view, of the questions arising as a result of the Franco-German war.

The third volume has just appeared of *La Vie Politique dans les deux mondes*, edited by Achille Viallate (Paris: F. Alcan, pp. 619). This volume, which covers the period from October 1, 1908 to September 30, 1909, is similar in general plan to the two preceding volumes. There are separate articles reviewing the political development in each of the great countries, and these articles are carefully prepared by recognized authorities in their respective fields. In addition to the articles which cover the political movements in each country there are also reviews of the year's development in international politics, economic life, and in the field of socialism. M. Louis Renault contributes a discussion of the great international conferences held during the year under review. *La Vie Politique* may be said to present the most satisfactory annual review of political occurrences throughout the world.

In *Le Principe d'équilibre et le concert européen de la paix de Westphalie à l'acte d'Algésiras* (Paris, Perrin, 1909, pp. 525), M. Charles Dupuis has made an important contribution to the literature of European diplomatic history. M. Dupuis, while treating briefly the period before the Congress of Vienna, devotes his main attention to the period since 1814, and his work is really a diplomatic history of Europe from that time to 1906, the history being treated so as to bring out clearly the influence of the European concert. In a concluding chapter on the character and rôle of the European concert M. Dupuis traces briefly its influence in controlling the external relations of the European states, and points out the limitations resting upon action by a concert of the great powers.

The British royal commission appointed in 1908 to enquire into electoral systems has made its report (London, 1910, pp. 63. Cd. 5163). The report is devoted primarily to the subject of proportional representation and forms a useful discussion of this subject, especially if consulted in connection with the blue book issued in 1907 on proportional representation in foreign countries and in the British colonies (London,

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1907, pp. 144. Cd. 3501). The commission recommends the adoption of the alternative vote system in single-member constituencies where there are more than two candidates.

The government printing office has recently issued *Treaties, Conventions, International Acts, Protocols and Agreements between the United States of America and other powers, 1776-1909*, edited by William M. Malloy (Washington: 1910, 2 vols). This is the first complete collection of United States treaties published since the issuance of Haswell's collection in 1889, and should prove of great value to all persons interested in the treaty relations of the United States. The new compilation will be much more useful to students of international law and diplomatic history than the volume of *Treaties in Force*.

A sixth edition of W. E. Hall's *A Treatise on International Law*, edited by J. B. Atlay, has appeared from the Clarendon Press, Oxford (London and New York: Henry Frowde, 1909, pp. xxiv, 768). This treatise, since its first appearance thirty years ago, has been recognized as a standard and authoritative work. The fifth edition appeared in 1904. Since then the second peace conference at the Hague, the Geneva conference of 1906, and the London naval conference have been held, and the Russo-Japanese war fought. The changes and additions required by these events have been duly made in the present edition.

The third edition of Cobbett's *Cases and Opinions on International Law* is to be in two volumes. The first volume dealing with the rules obtaining in times of peace has appeared (London: Stevens and Haynes, 1909, pp. 385). The scholarly character of the work is already established and needs no restatement. In the new edition additional topics are treated, numerous valuable notes added, and, generally, the work brought well down to date. The notes, it may be said, occupy a considerable portion of the volume and are admirable in every way and make the work in its present shape a most convenient manual of information. The cases selected for publication are mainly causes decided in the municipal courts of England and the United States. Those familiar with the earlier editions do not need to be informed that the work is not intended as a text for classes instructed according to the so-called case system, but is designed as an adjunct or companion volume to existing text books. For such use it is well adapted.

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Work-Accidents and the Law by Crystal Eastman (New York: Charities Publication Committee, pp. xvi, 345) forms one of the volumes issued as a result of the Pittsburgh Survey which was undertaken on the Russell Sage Foundation. Miss Eastman has studied with great care the causes and effects of industrial injuries and fatalities occurring within a limited time in Allegheny county, Pennsylvania. After showing the character and causes of accidents, and something of their economic consequences, the author presents a clear statement of the law of employers' liability, with especial reference to its application in Pennsylvania, and discusses the working of the present system. Her conclusion is that: "If its operation in Allegheny county is typical, the employers' liability law of Pennsylvania is of little positive value. It does not to any large extent encourage the prevention of work-accidents, nor does it greatly aid those who suffer economic loss from them." Miss Eastman suggests some plan of workmen's compensation as a remedy, and the movement toward such a solution will undoubtedly be aided by her clear and able presentation of the problem. In an appendix to this volume are given an account of the United States Steel Corporation's voluntary accident relief plan, extracts from the first report of the New York state employers' liability commission, and other information bearing upon the subject of accidents to workingmen.

In *A Project of Empire* (London, Macmillan, 1909, pp. xxv, 284), Prof. J. Shield Nicholson presents "a critical study of the economics of imperialism, with special reference to the ideas of Adam Smith." Prof. Nicholson takes the ground that the burden of imperial defense is becoming too great to be borne by England alone, and should be so adjusted that the colonies may share in it, but that such adjustment should not be made by independent plans for defense but by proportionate contributions into a common treasury. He also urges the feasibility of adopting a plan of free trade within the empire, and calls attention to the fact that such a plan would not necessarily commit England either to free trade or to protection with respect to other countries of the world; but he fails to realize the difficulty of obtaining closer trade relations between England and the colonies, while England under a system of free trade has nothing to give in return for colonial trade concessions. Another work based more or less upon the same idea as that of Prof. Nicholson, but which lacks the brilliance of *A Project of Empire*, is J. Ellis Barker's *Great and Greater Britain* (New York: Dutton, pp. ix, 380). Mr. Barker contends that Great Britain must have a navy large

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enough to cope with the navies of both the United States and Germany and that part of the cost of defense must be borne by the colonies. He favors protection and schemes of colonial preference based upon protection as a means of drawing closer the bonds of the empire.

The La Salle Extension University of Chicago has published a fourteen-volume series entitled *American Law and Procedure*, edited by Prof. James Parker Hall of the University of Chicago and by Mr. James DeWitt Andrews. The purpose of this series is said to be that of giving "a brief but accurate account of the principal doctrines of American law, in such a form that they may be readily comprehensible, not only to lawyers, but to intelligent readers without technical legal training." The publishers are somewhat optimistic in hoping that their volumes will be used by "intelligent readers" who are not lawyers. The series must be tested, it would seem, primarily by its usefulness to lawyers or law students. Volume IX is composed of brief articles on municipal corporations, by W. W. Cook; public officers, by Percy Bordwell; extraordinary remedies, by Percy Bordwell; and conflict of laws, by F. W. Henicksman. In Volume X there is an article on international law by Arnold Bennett Hall, but the remainder of the volume is occupied by such unrelated subjects as damages, bankruptcy, judgments, and attachments. Volume XII (pp. xiv, 408) is an excellent brief treatise on constitutional law by James Parker Hall. This volume were it issued separately might well find use as an elementary text-book. A more careful reading of state decisions would perhaps have caused a modification of Prof. Hall's statement that "generally speaking when a statute is declared unconstitutional private rights are left unaffected by it, just as they would have been had it never been passed," (p. 46). Volume XIII is devoted to *Jurisprudence and Legal Institutions* (pp. viii, 369) and is written by Mr. James DeWitt Andrews.

The Carnegie Institution of Washington in 1909 adopted a plan for the publication of a series of *Classics of International Law*, the series to be under the general editorship of Prof. James Brown Scott. The series is to include a critical edition of Grotius, and the principal works of his predecessors and successors. In the case of each work it is planned to have (1) a photographic reproduction of the original printed text, with an appendix containing notes by the editor, and (2) an English translation of the work in a separate volume. Arrangements have been made for editing a number of texts, among which the following may be men-

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tioned: Zouche's *Judicii Fecialis,* by Prof. T. E. Holland; Ayala's *De jure et officiis bellicis et disciplina militari,* by Prof. Westlake; Gentilis' *De Legationibus, De jure belli libri tres,* and *Advocatio Hispanica,* by Prof. Holland; Legnano's *De bello, de represaliis, et de duello,* by Prof. Holland; Grotius' *De jure belli as pacis,* by Prof. J. B. Scott; and Vattel's *Le droit des gens,* by Prof. de Lapradelle. The editions of Zouche and Ayala will probably appear before the end of 1910; Vattel will probably be published early in the next year; the edition of Grotius is in an advanced state of preparation and may be expected to appear late in 1911.

Under the title *Central America and its Problems* (Moffat, Yard and Company, New York, 1910, pp. 10, 347) Mr. Frederick Palmer, the well-known newspaper writer and war correspondent, has written a very interesting and instructive account of present day conditions and problems in Mexico and the Central American countries. With public attention sharply directed toward these countries on account of recent happenings affecting those countries, and the new turn given by Secretary Knox to our own diplomatic relations with them, the book is peculiarly timely. It is based on personal observations made by the author during a trip that he made in 1908 in the interests of certain newspapers. Mr. Palmer does not hesitate to handle without gloves various of the chief executives past and present of these countries. In view of the strenuous denial of the accuracy of the account of conditions given in a series of articles that have recently appeared in one of the popular magazines under the title of "Barbarous Mexico," it is of no little interest to note that the substantial accuracy of the picture there given, if not of every detail, is fully vouched for by Mr. Palmer. The book contains a select bibliography of recent works upon Central America, is well indexed and is provided with an excellent map.

The Parliamentary poll book of all elections from the Reform Act of 1832 to February 1910. Originally compiled in 1879 by the late F. H. McCalmont, B.C.L., M.A. Seventh edition. (Edward Stanford, London: pp. vii, 364.) There is no lack of British parliamentary poll books. Books of electoral statistics and personal data concerning members of the house of commons are issued from the headquarters of both political party associations and by several London newspapers. But what has come to be known as the *McCalmont Parliamentary Poll Book,* published by Edward Stanford possesses one feature peculiar to it which is of great value to students of parliamentary history. It

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embraces all parliamentary elections since the reform of the representative system in 1832; and by a very simple typographical arrangement it is as easy to trace the electoral fortunes of a defeated candidate as it is to trace those of men who have been elected to the house of commons. The book is in two sections. The first is concerned with elections between 1832 and 1885; and the second with those between 1885 and 1910 on the enlarged franchise that followed the reform act of 1884 and the redistribution of seats act of 1885. The *McCalmont Poll Book* has now been in service for thirty years. The issue that was called for by the general election of 1910 is the seventh; and there is scarcely a feature of usefulness to students of electoral statistics that has not been embodied in the book since the first issue was published in 1879.

Oxford Studies in Social and Legal History. Edited by Paul Vinogradoff. Vol. I. (Oxford: Clarendon Press, 1909, pp. vi, 303 + 78). This volume contains two studies in mediæval history written by investigators who were formerly students of Professor Vinogradoff. Prof. Alexander Savine, now of the University of Moscow, occupies the larger space with a treatise on the "English monasteries on the eve of the dissolution." This is an elaborate analytical study of the Valor Ecclesiasticus of 1535 which forms the assessment record of church property in England taken in the early stages of the Reformation. The Valor has long been in print and historians have made use of its data in various ways, but no one has hitherto made so careful a statistical analysis as may be found here. Because of the diversity of the returns of the inquisitors and in many cases the brevity and incompleteness of the data the study and the calculations must have required infinite patience.

Book I is devoted to a critical estimate of the Valor as to accuracy and completeness, and notwithstanding various omissions and differences when compared with other contemporary surveys the author is convinced "that an attitude of confidence . . . . is more justifiable than one of suspicion." Therefore he proceeds in Book II to a consideration of monastic economy as revealed in these data. The income of the foundations from land and other sources, the woods, the cattle, the food of the people, the monastic population, expense for education and numerous other topics receive a statistical treatment which deserves careful attention.

The second part of the volume is a brief study in later Roman law

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by Francis de Zulueta entitled "De Patrociniis Vicorum." The author analizes constitutions on the abuse of patronage to avoid taxation from the years 360 to 560, compares the writings of the orators, and closes with a practical study of the conditions of land tenure and village organization in Egypt.

The Most-Favored-Nation Clause in Commercial Treaties, by Stanley Kuhl Hornbeck (Madison: Bulletin of the University of Wisconsin, No. 343, pp. 121) is the title of a study which presents in condensed form the origin, the use, and the interpretation of a clause which has become the "corner-stone of modern commercial treaties." The author describes the conditional form of the clause which was peculiar to treaties of the United States from the very beginning and which has since persisted through all our commercial treaties. In the treaty with France in 1778 it was stipulated that each of the contracting parties should enjoy any particular favor in respect of commerce and navigation granted to other nations, "freely, if the concession was freely made, or on allowing the same compensation if the concession was conditional." Mr. Hornbeck then shows that in consequence of this conditional form the interpretation by the United States of the most-favored-nation clause has always been broad; the term "favored nation" is not to include a nation which has given a valuable consideration for special privileges, and such privileges will only be extended to other nations for a like consideration.

In contrast to the American policy England has uniformly maintained that the clause is absolute in character,—that if privileges are extended to one nation, even for a consideration they must, under the most-favored-nation clause, be extended to other nations unconditionally, since it might often happen that the latter, following a free-trade policy, would be unable to give the required consideration. A later chapter describes the long and complicated discussions growing out of the treaty of the United States with Prussia in 1828. In the concluding chapter the author discusses the advantages and disadvantages of inserting the most-favored-nation clause in modern treaties, and describes the success of the general-and-conventional tariff system of Germany. The study is carefully prepared and frequent references are made to authorities and sources. As condensing in an orderly way much information on one of the complicated questions of international tariff-making the work should prove a useful one.

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LIST OF DOCTORAL DISSERTATIONS IN POLITICAL SCIENCE

A list of doctoral dissertations in progress in the field of history is annually issued by the Department of Historical Research of the Carnegie Institution, and a similar list for political economy is annually published in one of the numbers of the *Economic Bulletin*. In one or the other of these lists may be found most of the dissertations of interest to students of political science, but a number of such dissertations are included in neither, and it has been thought well to publish the following list, which has been compiled partly from responses received from the several universities, and partly from the published lists of historical and economic dissertations. Only dissertations relating clearly to political science have been included. A date where given after the dissertation title indicates the probable date of completion.

BROWN

L. B. SHIPPEE, A. B. Brown, 1903; A.M. 1904. The Constitutional History of Rhode Island, 1775-1842.

BRYN MAWR

M. S. MORRISS, A.B. Woman's College, Baltimore, 1904. Maryland under the Royal Government, 1689-1715.

CALIFORNIA

W. C. WOODWARD, A.B. Pacific College, 1898; B.L. Earlham, 1899; M.A. California, 1908. Rise and Early History of Political Parties in Oregon.

CHICAGO

LUTHER LEE BERNARD, A.B. Missouri, 1907. Some Aspects of Convict Labor. 1910.

E. F. COLBURN, A.B. Miami, 1907; A.M. Cincinnati, 1908. The Origin and Early History of the Republican Party in Ohio.

EZEKIEL HENRY DOWNEY, A.B., A.M. Iowa, 1907, 1908. Labor Legislation in Iowa. 1910.

CLARENCE A. DYKSTRA, A.B. Iowa, 1903. History of Suffrage in the United States.

FRANCES FENTON, A.B. Vassar, 1902. The Influence of Popular Presentations of Vice and Crime on the Growth of Crime. 1910.

CLEO HEARON, Ph.B. Chicago, 1903. The Secession Movement in Mississippi.

D. T. HERNDON, B.S. Alabama Polytechnic Institute, 1902, M.S. 1903. The Secession Movement in Georgia in 1850.

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JULIUS TEMPLE HOUSE, A.B., A.M. Doane College, 1888, 1907. Methods of Prevention of Crime. 1910.

ROBERT BRYAN MCCORD, A.B. Florida, 1905; A.M. Yale, 1908. Beginnings of the Juvenile Court in the Southern States. 1912.

H. A. MCGILL, A.B. Butler, 1902. The Congressional Caucus.

D. R. MOORE, A.B. Toronto, 1902. Relations between the United States and Canada, 1815-1837.

CLARENCE J. PRINN, A.B. Park College, 1906; A.M. Kansas, 1908. A Study of the Sherman Anti-trust Act. 1910.

COLUMBIA

THOMAS A. BEAL, A.B. Utah, 1906. The Valuation of Franchises. 1911.

S. D. BRUMMER, A.B. College of the City of New York, 1899; A.M. Columbia, 1901. Political History of New York During the Civil War and Reconstruction.

O. G. CARTWRIGHT, A.B. Yale, 1893; A.M. 1901. A History of the American Consular System.

W. W. DAVIS, B.S. Alabama Polytechnic Institute, 1903; M.S. 1904; A.M. Columbia, 1906. The Civil War and Reconstruction in Florida.

E. J. FISHER, A.B. Rochester, 1906; A.M. 1907. New Jersey as Province and Commonwealth, 1738-1776.

H. S. GILBERTSON, A.B. California, 1903. Minor Political Parties since 1865.

W. P. HALL, A.B. Yale, 1906. English Political Societies, 1789-1795.

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BURTON PEABODY SEARS, A.B., A.M., Kansas, 1908, 1909. The Gadsden Purchase.

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Current Municipal Affairs

WILLIAM BENNETT MUNRO

The new Boston charter has been in operation now for nearly a year and most of its salient provisions have been put to the test. The most interesting feature of the new charter and the one upon which the framers of the enactment laid a great deal of emphasis is one giving to the State Civil Service Commission (a board of three members appointed by the governor of Massachusetts) the power to approve or disapprove all appointments made by the mayor of Boston. The charter requires that whenever the mayor nominates anyone to fill a city office (and practically all important offices connected with the city government of Boston are now made on the initiative of the mayor and not by direct election), he shall communicate this nomination to the civil service commission. In transmitting the name he shall, according to the terms of the charter, declare to the commission that his nominee "is qualified by training or experience" for the duties of the post to which his appointment is urged. If the civil service commission, after due investigation, finds that the mayor's nominee is so qualified, it so certifies, and the appointment becomes effective at once. But if, within the space of thirty days from the date of receiving the mayor's communication, the civil service commission does not certify its approval, the appointment does not go into effect and the mayor must name some other man for the post. The commission exercises therefore a sort of pocket veto over all the mayor's appointments whether to paid or unpaid positions. Since the charter went into effect Mayor Fitzgerald has sent to the commission more than a score of nominations. The commission has confirmed some, rejected others. It has interpreted the words of the charter in their proper sense and has exacted in each case that actual qualification through prior training or experience be shown before it will give its approval. In the case of some posts no extensive qualifications have been insisted upon because the duties of the office were of an elementary nature; in other cases it has put its exactions on a very high plane. In one case it refused to confirm, for the post of city collector, a man who had been confirmed by the United States Senate as postmaster of Boston and who had for two years been mayor of the city. The commission has insisted that appointees to municipal offices shall be reasonably qualified. It has not asked that the mayor appoint the best experts available; it has no power to ask that. But it has steadfastly declined to countenance any attempt

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at payment of political debts at the expense of the city treasury. Appointments made since the new charter went into force have been of course not all that ardent municipal reformers could desire; but they have undoubtedly represented a very much higher standard than that set in any previous Boston administration.

The next annual meeting of the National Municipal League will be held at Buffalo from November 14th to November 16th inclusive. During their stay in Buffalo the members of the League will be the guests of the Buffalo Chamber of Commerce.

The Bureau of Municipal Research in New York City has issued a small handbook entitled School Stories (N. Y., 1909, pp. 88). The volume is made up of selections from school reports and is amply illustrated. Its aim is to bring to the attention of taxpayers, parents, teachers, and all those interested in the New York schools much valuable information put into attractive form.

The Cleveland Civil Service Commission has issued a report entirely exonerating Chief Kohler of the Police Department from all the charges recently filed against him with the mayor of the city by some of the citizens.

Resolutions in favor of a municipal harbor, or a series of docks and piers owned by the municipality were recently passed by the city council of Chicago. An order was accordingly issued instructing the harbor committee to take the various steps necessary to carry these resolutions into effect, including the making of application to the federal authorities for the necessary permission. The action of the city council is the result of the city's failure to come to terms with a private dock company which has been conducting negotiations with the municipal officials for some time.

A New York newspaper has made an interesting investigation of the sums spent by the city for newspaper advertising during the past four years. The enquiry shows that no less than $5,000,000 was spent directly or indirectly for this purpose and that eighty publications depended either wholly or very largely upon the city treasury for their existence. It is the opinion of the city comptroller that fully one-half of this large expenditure was waste, and it is now proposed by the new administration

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to place advertisements only in journals which can show adequate circulation and standing. In addition to the large sums spent on advertising New York maintains its own official publication and this has been conducted at a deficit which for the past fiscal year exceeded $40,000. The new charter of Boston provided for the publication of a weekly record in which all the city's advertising should be printed. Its returns for the first few months of its career also disclose that it is published at considerable loss to the city.

At the last session of the legislature of Louisiana an enactment was made providing for the establishment of the commission system of city government in all the cities of the state having over 7000 population with the exception of New Orleans, Baton Rouge, and Lake Charles.

Cleveland has, to some extent, followed the example set by Chicago in the establishment of a municipal court. In Chicago, the courts of justices of the peace were abolished altogether and the municipal court was established to take their place in December, 1906. The change there has been so successful that the idea has spread elsewhere.. Congress passed a law in February, 1909, creating a municipal court for the District of Columbia. In 1908, a commission was appointed in New York to investigate inferior courts, the result of which was the recommendation of a municipal court for Buffalo.

The municipal court for Cleveland will consist of five judges and will have original jurisdiction in the following cases: "(1.) In all civil actions and proceedings of which justices of the peace have or may be given jurisdiction. (2) In all civil actions and proceedings at law for the recovery of money or personal property of which the courts of common pleas, have, or may be given, jurisdiction, when the amount claimed by any party, or the appraised value of the personal property sought to be recovered, does not exceed one thousand dollars; and in such actions judgment may be rendered for over one thousand dollars when the excess over one thousand dollars shall consist of interest or damages or costs accrued after the commencement of the action. (3) All actions on contracts, expressed or implied, when the amount claimed by the plaintiff, exclusive of all costs, does not exceed twenty-five hundred dollars. (4) All actions in forcible entry and detainer. (5) All actions and proceedings whether legal or equitable, to enforce the collection of its own judgments. (6) All actions and proceedings of which police courts in cities have or may be given jurisdiction; and the

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municipal court shall succeed to and have all the powers and exercise all the functions now had and exercised by the police court in said city of Cleveland."

The Court will also have appellate jurisdiction from justices of the peace. The Legal Aid Society and others interested in the reform of the present system have been trying for some time to secure a municipal court in order to overcome the evils of the courts of justices of the peace. The act creating the municipal court does not abolish the courts of justices of the peace, although it does abolish the police courts, but since the municipal court is given original as well as appellate jurisdiction in all cases which may come before justices of the peace, it is possible that the evils complained of will be eliminated.

St. Louis and Philadelphia have gone so far as to prepare bills for the establishment of such courts to take the place of justices of the peace, and the question has been discussed to some extent in Baltimore.

Early in July there was held at Schenectady a conference of mayors of the second and third class cities of the state of New York. The conference was devoted to a discussion regarding the essentials of municipal health, and was attended by representatives of forty-two cities. Addresses were made by Lawrence Veiller, Dr. Luther H. Gulick, Dr. George W. Goler, Homer Folks, Prof. Charles H. Zueblin, and others. Resolutions were passed advocating new health legislation and better methods of local sanitary administration.

The City Club of Chicago proposes to organize a permanent bureau to watch over, advise, and report on the methods and machinery of the Chicago governing bodies. This bureau will perform a service for Chicago similar to that performed for New York by the Bureau of Municipal Research, and will attempt to make permanent the reforms accomplished by the Merriam commission.

The ninth International Housing Congress was held in Vienna, Austria, from May 30 to June 4. Representatives were present from many of the European countries and from the United States. Discussions were had regarding municipal ownership of dwellings or land, municipal loans for private building, tenement houses, and other questions with reference to the problem of municipal housing.

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The Bethlehem Institute of Los Angeles has established a municipal reference bureau. A reference library is to be established, and will contain, as far as possible, municipal reports and periodicals, and the best literature upon the various subjects relating to municipal administration. A lecture and press clipping service will also be organized, and a social survey of the city of Los Angeles is planned.

The Second National Conference on City Planning and Congestion was held at Rochester, N. Y., on May 2 to 4, and was attended by a large number of persons. A permanent organization was effected under the name of the American Conference on City Planning, and annual meetings will be held. The papers read at these conferences are to be published in full, and an annual membership fee of five dollars is to be charged.

The election of the London County Council took place on Saturday, March 5. In the outgoing Council there were seventy-nine Municipal Reformers and thirty-nine Progressives. In the new elections there were returned sixty Municipal Reformers and fifty-eight Progressives, although the Municipal Reformers had a much greater proportion of the popular vote. After the election a proposal was made to the Progressives that a non-partisan administration should be conducted, but this proposal was rejected, and the Municipal Reformers obtained a safe working majority by choosing the ten new aldermen entirely from their own party.

The *Year Book* for 1910 of the Civic League of St. Louis (pp. 83) contains a summary of the work accomplished during the previous year, and also an address by President Harry Pratt Judson on Civic Righteousness.

There was held at Providence, R. I., in July a conference on street cleaning, which was attended by officers representing thirty-eight New England cities and several cities in New York and New Jersey. The meeting was held under the auspices of the Bureau of Social Research of Providence. Another similar conference is planned for next year.

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BOOK REVIEWS

The Relations of United States and Spain: Diplomacy. By FRENCH ENSOR CHADWICK, Rear-Admiral U. S. Navy. (New York: Charles Scribner's Sons. 1909. Pp. 610.)

The war of 1898 between the United States and Spain has already given rise to a large literature, But much of this literature, especially that produced in America, is so superficial or so partisan, that it can have little permanent value. Happily the latest contribution to this subject is remarkably free from any evidence of superficiality or of blind partisanship.

Admiral Chadwick, a trained historical scholar, (and the author of *Causes of the Civil War,* [vol. 19 of the American Nation Series]) began his study of the conflict of 1898 with the intention of treating the causes of the war, merely as a preliminary chapter to a treatise on the war itself. However, he discovered that "these causes were of such long growth and of such intricate character that it was vain to hope to bring them into short compass. The attempt at compression was abandoned, and the book is thus an effort to bring before the reader the story of more than a hundred years of what has really been a racial strife. . . The war was thus but a final episode in a century of diplomatic ill-feeling; sometimes dormant, but more often dangerously acute" (p. 3). This fundamental conclusion as to the causes of the Spanish-American War, may be seriously questioned. Though the author shows clearly how the century of Spanish diplomacy was filled with bitterness and ill feeling, he fails to point out just how these previous estrangements made war inevitable in 1898. It seems rather as though in his search for fundamental causes, Admiral Chadwick has been lead to over-emphasize the influence of the early international differences, and especially the influence of racial antipathy. Nevertheless the author has succeeded in presenting the first scientific and comparatively exhaustive treatment of the diplomatic relations of the United States and Spain. He describes clearly and fairly these relations, beginning in 1762 and ending with the outbreak of war on April 21, 1898, Often his unusually adequate discussions of diplomatic affairs, throw new light upon many important phases of our political history.

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In his opening chapter, the author discusses Spain's attitude during the American Revolution, in a way which explains many new phases of our relations with that power. He follows this by an account of the treaty of 1795, which was the result of the intrigues in the southwest. A careful résumé of Spain's part in the cession of Louisiana, and the early problems involved in the Florida question, closes the fourth chapter. Following this, the author treats the diplomacy of the years 1805–1808, during which time the United States wavering between war and peace, abandons the possibility of an alliance with England, in order to intrigue with France. Speaking of this and of Jefferson's failure to realize the need of a navy, Admiral Chadwick says: "The result to America was humiliation which should have entered as iron into the souls of her rulers" (p. 89). Napoleon's invasion of Spain and its effects in America, Jackson's invasion of the American occupancy of Florida, Adam's vindication of Jackson, the Spanish land grants, and the final ratification of the Florida treaty, February 22, 1821, bring the author to the close of his seventh chapter. The eighth is a brief but interesting account of the recognition by the United States of the independence of the South American States.

This leads naturally to an admirable history of the Holy Alliance, its activities in Europe and its plans for America, and of Canning's firm attitude and his influence on American and European policies. The discussion of these questions, and that immediately following on the Monroe doctrine, constitute one of the clearest, most accurate and most scientific accounts, to be found in English, of the rise and early development of this doctrine. The following chapter, dealing with the Panama congress and Polk's offer of purchase, shows clearly how American slavery had become "the bulwark of what remained of Spanish dominion in the Americas" (p. 215). The intolerant conditions in Cuba, so largely a result of anarchic conditions in Spain itself, and the American filibustering expedition of the early fifties, are then described. On account of the French and British offer to unite with the United States in an agreement disclaiming "all intention to obtain possession of the island of Cuba. . . . " (p. 241) and a transcript of secretary Everett's able reply, bring the author to the close of his twelfth chapter. The notable Black Warrior affair and the notorious Ostend Manifesto are then ably treated, showing that Soulé was doubtless the real author of that brutal doctrine which was immediately and unreaservedly repudiated by Secretary Marcy.

Chapters fourteen to nineteen, inclusive, deal with the bloody insur-

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rection in Cuba, known as the Ten Years' War (1868–1878). The early diplomacy of the war, Grant's efforts at meditation, the anarchic conditions in Spain, Grant's sympathy for the Cubans, which almost betrayed him into a premature recognition of their belligerency, the statesmanlike attitude of Secretary Fish, the lamentable Virginian affair, the final settlement of that striking proof of Spanish governmental incapacity, and many other phases of the diplomacy previous to 1875 are ably discussed. Secretary Fish's notable declaration of November 5, 1875, its reception in Europe, the final settlement of the insurrection, the period of peace in the island (1878–1895) and finally the causes and outbreak of the insurrection which ultimately involved the United States are then carefully described.

Thus two-thirds of Admiral Chadwick's book gives an admirable and scholarly history of Spanish-American diplomacy prior to 1895. His narrative is nowhere a mere mosaic of quotations from secondary writers. His conclusions are always based upon the best available so urces, both American and European. His references are proof of thorough and painstaking research, while the extremely copious, but carefully selected quotations and transcripts, will render his book a delight to the scholar, though they may make it less popular. It is this portion of the work dealing with the diplomacy prior to 1895 which will probably have the most permanent value; for it contains little or no trace of bias, no thesis to be proven, and no cause to be defended. The result is in every way a satisfactory diplomatic history.

The last third of the work, treating of the diplomacy subsequent to 1895, is extremely interesting and by far the best American history of the subject to date. Admiral Chadwick's method of treatment here is exactly the same as that in the earlier portion of the book. He discusses at length the general attitude of the Cleveland administration toward Spain and the Cuban question, the work of General Weyler in Cuba, American public sentiment as reflected in congress, and especially the notable case of the "Competitor," and President Cleveland threatening annual message of 1896. The presidential campaign of that year relegated the Cuban question to the background, for a time. But the new administration was soon perplexed by renewed agitation. Admiral Chadwick justly describes Mr. Cleveland as one "whose independence in judgment had shown strongly throughout his administration in stemming the tide of emotional feeling in the Cuban question. Mr. Cleveland by character and termperament stood as a leader of public opinion. Mr. McKinley as a follower. . . . The change in the

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personality of the Secretary of State was no less momentous. . . . Mr. Olney, one in temperament and character with his chief, was succeeded by Senator John Sherman," who had frequently been guilty of "illogical and inconsiderate" attacks (p. 490), upon Spanish policies in Cuba, and who had now reached the age of seventy-four years, with his intellectual powers seriously impaired. In describing this appointment, it would have been plainer had the author simply said that Mr. Sherman was forced to accept the portfolio of state in order to make room for Mr. Hanna in the United States senate, instead of saying, "that the appointment was a concession to certain political adjustments in his state of a decidedly personal nature" (p. 491).

The writer then continues to describe fully the various events leading to the war, but with an apparently increasing tendency to justify the attitude of the administration at Washington. Still it would be very unfair to say that Admiral Chadwick does not present the facts impartially. Indeed he is scrupulously careful to do this in every case. It is only his conclusions which are open to question.

He acknowledges that the Cubans equally with the Spaniards were responsible for the suffering of non-combatants in the island. The results of the failure of the new liberal Spanish ministry in its conscientious attempts to make Cuba autonomous are sympathetically described. The "DeLome" Incident and the destruction of the Maine are given as the two most important causes of the war. In this connection the "yellow" press is justly scathed for its flagrant, but all too successful, attempts to bring on the conflict. In his closing chapter, the author admits that Spain (early in April) had "practically accepted the American demands in full." (p. 572.) Yet he defends President McKinley's action in practically ignoring the complete concessions of Spain and in making peace impossible by his weak surrender of his diplomatic prerogatives to a bellicose congress, on April 11, 1898. The president's course, says Admiral Chadwick, was "the best, judged by our knowledge today, for Spain, for Cuba, and for the United States (p. 576).

This conclusion may be seriously doubted. Our intervention in Cuba must be justified, if at all, on the grounds of humanity, and because of the failures of all peaceful means to secure our just demands. All peaceful means had not failed. General Woodford, our minister at Madrid, as late as April 10, 1898, telegraphed the president: "I hope that nothing will now be done to humiliate Spain. . . . With your power of action free, you will win the fight on your own lines," (p. 575) that is, make Cuba independent without war. In short, a careful reading of

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the diplomatic correspondence of the years 1897-1898, shows that somehow the administration at Washington increased its demands with every new concession granted by Spain; and that in April, 1898, Spain was literally on her knees to us; yet we refused to grant her any terms, other than the most humiliating surrender.

Admiral Chadwick, however, concludes that "the war was the final act in the struggle for supremacy between Anglo-Saxons and the men of of the Latin, race in North America, in which Philip, Elizabeth, Drake, Howard, Chatham, Vernon, Wolf, Montcalm, Washington had, all a part. The expedition of the Great Armada; the murderous early struggles in Carolina and Florida; the Seven Years' War which drove France from the American continent, were but acts in the drama the culmination of which, in 1898, left the Anglo-Saxon and the American in Mexico masters of the whole of the northern continent. It was the end of a race struggle, which had lasted full three hundred years." (p. 587). This is a euphonious conclusion, but one which our author's own statement of the case fails to substantiate. It may, indeed, be true that the loss of Cuba to Spain was inevitable—as a result, however, of her own governmental incapacity rather than because of the "conflicts of the two races" (p. 587)—yet "the appeal. . . . to the law of force,. . . . , the arbitrament of the greater questions of life" (p. 586) apparently would have been unnecessary had the McKinley administration displayed either the courage or the sincere desire for peace, evidenced by those of both President Grant and President Cleveland, under similar circumstances.

Admiral Chadwick's style is lucid, incisive, and forcible. His characterizations are keen and definite, and are fearlessly expressed, until he enters upon the discussion of the period subsequent to 1895. One can see throughout, both in his judgment of men and of policies, the influence of his life as a seaman. In spite of his resulting war-like predilections, and his intimate connection with many of the events of the war itself, he is notably fair and open-minded—if we except his final judgment as to the justification of the American intervention in Cuba, which precipitated the conflict.

On the whole Admiral Chadwick has made a notable contribution to the study of American diplomacy. As a history of the diplomatic relations of the United States and Spain, his volume will be of the highest value. It is made especially useable, as a book of reference, by a very complete and carefully arranged index. Moreover, it will be a decided stimulus to the careful study and scholarly presentation of other phases of our diplomatic history.

J. G. McDonald.

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International Law. By T. Baty. (New York: Longmans, Green and Company. Pp. 364. 1909.)

The scope of Mr. Baty's book is much narrower than its title would lead us to suspect. Its chapters, with their eccentric headings, form a series of brilliant essays upon a few phases only of the international relations of states. The cardinal principle, to which he often reverts, is the necessity of a stricter maintenance of the sovereignty and territorial independence of nations if peace is to be preserved under the present international system. With this point of approach before us we understand why Mr. Baty, in his chapter entitled Arbitration, ridicules the establishment of the permanent Hague court with its "nicely regulated stations of full judges and deputy judges, of first-rate and fifth-rate powers." Such a court, he contends must fail in the essential requisites of true arbitration, viz: that the arbitrators be freely chosen and that they be chosen for the dispute in question. His ideal is that of a more elastic court chosen for each occasion, as alone capable of securing the confidence of nations. But the history of arbitration would seem a sufficient answer to this proposal; and it has not yet been proved that "supranational courts only excite apprehension."

Under the heading Penetration, Mr. Baty questions whether treaties and sentiment have not gone too far in according a highly privileged position to foreigners. From straining the obligation of a nation towards strangers friction and quarrels must result; for though a state may make treaties granting equality to strangers, it cannot force its citizens to observe them in their spirit. A sound national sentiment is indeed the best and only protection to a nation against the encroachments of "pacific penetration," the modern form of conquest under the banner of commerce. As for the state itself its sovereignty requires that it shall have "the liberty to be unfair, to be ungenerous to the point of spoliation, within its own limits." In thus restricting very narrowly the rights of aliens in foreign countries, Mr. Baty may seem to be taking a step backward, but he is doing so in the interests of the independence of states,—and if further justification be needed it must be remembered that the plea of commercial and social intercourse has too often been a mere excuse for the selfish exploitation of one country by another.

Penetration is illustrated in two lengthy chapters showing what has been the practice of nations in their treatment of the claims of foreign governments for losses sustained by their subjects. England and the United States are several times exhibited as mere international bullies.

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The chapter entitled Territorialism contains a strong denunciation of the measures of "pacific violence" by which the sovereignty of weaker nations is encroached upon without actual war. Mr. Baty maintains that to recognize as regular such practices as reprisals, pacific blockade, and occupations to guarantee solvency and to protect commercial interest, would lead to nothing less than international anarchy, resulting from a "universal scramble for advantages, backed by force of arms." The necessity of a declaration of war would make a nation think twice before enforcing its demands. War is a serious matter even for the strongest state; it throws upon the aggressor "the general odium as a disturber of the public peace;" and it thus becomes the great security against aggression. Mr. Baty's proposal seems entirely impracticable; there is a clearly a large class of cases in which some indemnity is due and should be demanded, and yet for which no government would be willing to disturb the peace of its citizens by entering upon a war.

"Stratification" discusses the possible organization of the people of the world by class interests which will cut across national boundaries Class-cohesion, it is predicted, will prove a stronger force than nationality, and cosmopolitanism will appear as the truest type of socialism. The great remedy against the state of suppressed anarchy which must result from the conflict of class interests, as well as against the benevolent despotisms of modern consolidated states, Mr. Baty finds in a plan of federation. The scheme of this federation in its world-wide aspect is somewhat visionary, but the argument runs as follows. Local sovereignty is the great need of mankind; it alone can offer opportunity for that self-development which gives an interest to provincial life, and it alone can win the patriotism of the citizen whose individuality is swallowed up in huge cities and consolidated governments. But with a multitude of locally sovereign units comes the attendant danger of frequent war. This evil can only be averted by federation, in which nations, while retaining their independence must renounce one liberty, that of oppressing their neighbors. Mr. Baty must have observed that the world can not yet be safely trusted to renounce that liberty.

The association-state, founded upon the voluntary union of mutual interests, carries us too far into the realms of speculative altruism to merit serious discussion.

Mr. Baty's book is a contribution to the philosophical aspects of international law; it is thoroughly pleasant reading; and its proposals, if not always practicable, are at least suggestive of much thought. International Law, at bottom, deals with people, more than with states.

C. G. Fenwick.

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Le Nouveau Cynée—The New Cyneas of Emeric Crucé. Edited with an introduction and translated into English from the original French text of 1623. By THOMAS WILLIAM BALCH. (Philadelphia: Allen, Lane and Scott. 1909.)

This beautifully printed work consists of a preliminary note by Mr. Balch of two pages, letting us know that he copied the original text from Charles Summers' copy of the *Nouveau Cynée* now in the Harvard Library and explaining the care that has been taken with both text and translation. An introduction of twenty-eight pages by Mr. Balch follows, giving a history of the small and rare French work of 1623, whose translation and editing he has undertaken. He details the discovery of the true name of the author by Mr. Ernest Nys of Brussels in 1890 and gives a résumé of the little that is known of Crucé, a monk of Paris born about 1590 and who died in 1648. The French text and English translation cover some 350 pages, beside Crucé published several later works and sustained some sharp controversies. The introduction gives a somewhat abbreviated account of the views expressed in the work presented. It makes mention of some writers with like ideas who were near Crucé in time and place and shows that Charles Pfister thinks that Sully the famous minister of Henry the IV derived his idea of international arbitration from Crucé's work and shaped the "grand design" of Henry IV (often deemed the beginning of the modern idea of international arbitration) upon lines indicated by Crucé.

Crucé's work is printed in French upon one page and Mr. Balch's English translation upon the opposite page. The translation is scrupulous and almost child like in literalness.

The words are kept, generally, in their gallic order, often to the destruction of the English idiom. Not unfrequently moreover strange errors of grammar and of meaning have been allowed in the translation. Thus "*celuy*" is habitually translated "*he*" when the rules of grammar seem to demand that it be rendered by "*him.*" Thus "It is well for a Prince to oppose valoriously *he* who wants to encroach" (p. 38). "The foolishness of *he* who commands" (154) "punish doubly *he* who offended" (p. 188), "why not punish with a similar rigor *he* who violates honor" (p. 190), "which condemned with a fine *he* who had refused, etc." (p. 304).

On p. 300 we are told "for it is right to lend aid to a man in revolt against his sovereign," whereas the French text says it is *not* right to do so.

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Prepositions and lesser words necessary in English but not in French are omitted as "I would like better, said this unnatural son have thrown my father into a well" instead of "to have thrown" as " avoir jetté" plainly should have been translated (p. 160).

"The earth should swallow up these monsters who thus abuse *of* its riches (*qui abusent ainsi de ses richesses*) where the English idiom would be far better observed by omitting the "*of*" (p. 204).

Sentences are slovenly and erroneous through repetition as "of whom formerly one took so much care and now of which one *now* takes scarcely any" (p. 288) "*plus aysees a garder*" is translated "more easier to keep" instead of "more easy" (p. 340) (which may be justified as an old form, however).

These examples are enough it is believed to show the lamentable disposition to ignore English usage in adhering to a verbal and literal rather than a free and idiomatic or even grammatical form of translation.

The work of Crucé is a political essay addressed to Monarchs and sovereign princes, especially proposing an international court of ambassadors to sit at Venice and discussing the means to establish a general peace and the liberty of commerce throughout the whole world. The writer boldly denounces the brutality and futility of war, urges the just treatment of foreigners, gives much time to advocating a sound currency and especially shows the evils of a coinage debased and of uncertain standards.

No one who recalls Montaigne's immortal essays which appeared in 1580 need be wholly surprised at Crucé's humanity and breadth of view forty three years later. Yet to find inhumanity declared the source of all evils, to discover a passage like this "since human society is one body of which all the members are in sympathy in such a manner that it is impossible for the sickness of the one not to be communicated to the others" agreeably surprises in the philosophy of a monk of 1623 (p. 10).

These modernities contrast too with his theory that "monarchies come immediately from God" (p. 36). Yet presently after that sentiment we are pleased with a passage exhorting Princes to levy duties only moderately and especially on the merchandise necessary to life and which vividly portrays the advantages of the freest commerce and intercourse.

"What a pleasure it would be," he says, "to see men go here and there freely and mix together without any hindrance of country, ceremonies or other such like differences, as if the earth were, as it really is, a city common to us all."

After enumerating many different mechanical pursuits he admirably

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defends the dignity of labor thus "To say that such vocations belong to slaves, as Lycurgus believed, is an impertinance since a prudent and reasonable man never despises a thing without which he can not get along."

Medicine he approves. Theology, which was his vocation, he very justly thinks beyond our capacity. Rhetoric he finds superfluous and "jurisprudence" (he says) "is also not necessary and a good natural judgment is sufficient to finish lawsuits without resorting to a multitude of laws and decisions that only confuse cases instead of simplifying them." "Grammar, poetry and history are more specious than profitable." He argues well against the prosecution of those who do not wish to embrace our religious ceremonies and mentions "those simpletons of Athens who thought the moon of theirc ountry better than that of others." He puts His Holiness the Pope at the head of all sovereigns and the emperor of the Turks second on account of the majesty, power and happiness of his monarchy, the Christian emperor third, and the Kings of France ahead of all kings since they govern a people the most renowned to be found in all the world. The kings of Great Britain come after those of Persia, China, Prester John and the grand dukes of Muscovy. Republics could only vote in his parliament of nations when princes were equally divided. With all his love of liberty, he says of Luther and Calvin "what a mess have they not made with their tongues and writings under pretense of reforming the abuses of christianity, such people must be anticipated and forbidden to dogmatize either in public or private under penalty of rigorous punishment" but sovereigns he would have amenable only to God.

We can not further epitomize this vigorous and yet quaint production which is now laid before us after nearly four hundred years of obscurity, or at least inaccessibility. We find it full of freshness of thought and often of elevation and breadth of feeling, yet sometimes crossed and stained by the harsher and narrower views of his time of his order. We are grateful to Mr. Balch for presenting it so clearly and in such an admirable physical dress. We only regret that there has been such inferior pains bestowed upon the English into which the old French is translated and such entire misapprehension of the obligations of a scholar to obey the laws of the language into which he assumes to translate. There are many sentences which to quote a phrase from Mr. John Bigelow's last work "can not be parsed or subjugated to the rules of grammar." A later edition ought to correct this.

CHARLES NOBLE GREGORY.

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Consular Cases and Opinions from the Decisions of the English and American Courts and the Opinions of the Attorneys-General. By ELLERY C. STOWELL, Docteur en Droit (Paris). (Washington, D. C.: J. Byrne and Company. 1909. Pp. xxxvi, 811.)

This book ought to prove a valuable assistant in any American consulate, or in the office of any American lawyer with foreign business. It contains in alphabetical order under the case's title either extracts or complete opinions of about three hundred cases of which about one-fifth are British, the rest American, and usually federal. As many of these are extracts the book cannot in every instance be an ultimate guide. An objection frequently made to books of this class appears to be this: no one can tell from the extracts whether the matter is obiter or decision. Following the section of cases one finds a judicious and serviceable selection of the opinions of the United States Attorneys-General, arranged chronologically, the last opinion being of the year 1903. The volume contains, moreover, an analysis of the treaties to which the United States has been a party, and an extract from Scott and Beaman's *Index*, both relating to consuls, and, finally, a compendium or concise digest of the cases in the first part of the book. This compendium is arranged according to the same plan used by the author in his work on the *Consul* (Paris, Pedone); 1909. In no part of the work is there comment. Had there been, the book would have been more serviceable. One might then know what cases have been overruled or rendered inapplicable by legislative action. The author admits this shortcoming, and after all, the book covers a field which no other does and it should be extremely useful.

JESSE S. REEVES.

Das Staatsrecht des Königreichs Sachsen. Von OTTO MAYER, Professor des Oeffentlichen Rechts an der Universität Leipzig. (Tübingen: Verlag von J. C. B. Mohr (Paul Siebeck), 1909.)

This compact volume of some three hundred or more pages, crown 8vo, forms the ninth in the series issued by Jellinek, Laband and Piloty, who have succeeded Marquardsen in bringing out *Das öffentliche Recht der Gegenwart.* As might be naturally expected from the author of the noted work on *Verwaltungsrecht*, this study of Saxon constitutional law is

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clear and comprehensive, and will be welcomed by students of comparative constitutional government.

Opening with a historical introduction, which traces the constitutional development of the land of the Wettins down to the end of the fifteenth century, the author then passes to a consideration of the Albertinian electorate from this period to the breaking up of the old Empire. A brief review of the formation of Kingdom of Saxony, with the fuller evolution of its constitution, follows, and a page or two is given to the discussion of the relation of Saxony to all Germany.

The second division of the book deals with the general theories which underlie all government concerning the three essential elements of the state, and some twenty-five or thirty pages are taken up with a discussion of the *Staatsgewalt*, *Staatsgebiet* and *Staatsangehörigen*, to which is appended a short treatment of the remnants of the privileges of the nobility.

The first two sections of the work having cleared the ground for the more intensive study, in the third division of the volume Professor Mayer plunges at once into the question of the succession to the throne and of the legal position of the king under the Saxon organic law. In this same section, the author takes up quite in detail the matter of the property of the state and the crown rents, the regulations governing the royal house, the fees, or income, due the various members of the royal family, the matter of secundogeniture and the procedure in case of the incapacity or minority of the king.

Passing now to the legislative organs of the kingdom, the manner of constituting the first, or upper, chamber is set forth with much clearness. This body is small, consisting of 46 members, leaving out of the count the royal princes, whose number naturally, is variable. It is made up of some four different classes, the first of which includes the adult princes of the royal house, who are members by reason of birth. The second class includes certain prelates, some members of the nobility, certain professors in the university, etc.; the third class comprises the proprietors of certain great estates—*Rittergutsbesitzer*—twelve of whom are elected and ten appointed by the king for life; while the fourth class is made up of the first magistrates of Dresden and Leipzig, together with six representatives of other cities, chosen by the king with special reference to locality. To these are added five members selected by the free choice of the king for life.

The second, or popular, chamber consists of 91 members, 43 of whom are elected by the municipal communities and 48 by the rural, for a term

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of six years. Saxony has had an interesting history with respect to the suffrage, which Professor Mayer takes up at some length. As the law stands at present, under the revision of May 5, 1909, elections are held in districts, with a system of registration, and are participated in by qualified voters divided into four classes. That is to say, a *general* right to a single vote is conferred upon all citizens who meet certain requirements, but upon three other classes of citizens is conferred the right to two, three and four votes, according to certain property tests. A discussion of the meetings of the legislative bodies, the order of business and the rights and duties of the members of the chambers closes this division of the work.

Professor Mayer next takes up the matter of legislation and legislative procedure, the right of issuing ordinances, the position occupied by treaties with respect to the constitution, and then passes to the discussion of the budget and financial legislation as well as to the administration of the state debt. The legal provisions and procedure in safeguarding the constitution are also touched upon in a few pages.

Turning now to the administrative side, the author traces the history of the Saxon administrative system, dealing at some considerable length with the law governing state servants, with the ministry and the council of state, and with the organization and arrangements of the local divisions of the state. Some fifteen pages are also devoted to the administrative courts and to the difficult question of conflicts of competence and the organization of a court to settle such matters finally.

The last division of the volume is concerned with the subject of local self-government, in which the communes, or local units, are handled, and the peculiar situation of certain independent *Gutsbezirke*, or portions of the state's territory which do not belong to any local commune, as well as of certain communal unions, is dealt with. There is appended to the volume the constitutional documents of September 4, 1831, with references to those pages of the book on which the particular matter in the constitution is treated.

Of all the volumes issued in *Marquardsen*, this is one of the best. Not the least interesting thing about the work, although merely incidental, is the fact that it is dedicated to the university of Leipzig, in honor of its 500th anniversary.

B. E. H.

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The Civil Code of the German Empire. Translated by WALTER LOEWY, under the auspices and annotated by a special committee of the Pennsylvania Bar Association and the Law School of the University of Pennsylvania (Boston: Boston Book Co., 1909. lxxi, 689 pp.).

The criteria of a translation are accuracy, smoothness, and idiomatic expression. A recent notice of the book now under review says, "The accuracy of the translation and annotation will be presumed from the auspices under which the work is put forth." Such a presumption seems ultra-charitable, and while no attempt has been made by the reviewer to verify annotations, a number of lists have been made to judge of the quality of the translation.

The headings of the table of contents contain a number of the most important legal terms of the code. The following selections reproduce first Mr. Loewy's rendering, then Mr. Wang's, with which the present translation naturally challenges comparison:

Begründung (of obligations); L: Motive, W: Creation. *Erlöschen;* L: Expiration, W: Extinction. *Inhalt;* L: Purpose, W: Scope. *Rücktritt;* L: withdrawal, W: Rescission. *Erlass;* L: Remission, W: release. *Mangel der Sache;* L: defect of thing, W: defect of quality. *Kauf nach Probe;* L: purchase according to test; W: sale according to sample. *Kauf auf Probe;* L: purchase on trial, W: sale on approval. *Pacht;* L: lease including the fruits derived, W: usufructuary lease. *Geschäftsführung ohne Auftrag;* L: transacting business without authority, W: management of affairs without mandate. *Schuldverschreibung auf den Inhaber;* L: note of debt payable to holder, W: obligation to bearer. *Vorlegung;* L: inspection, W: production. *Eingehung der Ehe;* L: consummation of marriage, W: conclusion of marriage. *Eheliche Abstammung;* L: matrimonial descent, W: Legitimate descent. *Aufschiebende Einreden;* L: delaying objections, W: dilatory pleas. *Nacherbe;* L: subsequent heir, W: revisionary heir. And from the text, S. 2109 *Erbfall;* L: succession W: accrual of inheritance. S. 2317 *Standesbeamte;* L: official of court status, W: registrar.

In nearly every one of these cases the Wang translation is preferable.

Mr. Loewy does not seem to appreciate the common use of the term consummation of marriage, when he employes it for translating the entering into the marriage. In several cases *wesentlich* is rendered "essential" when it has the other meaning "material" or important (see S. 229, 610). *Gemeinschaftliches Testament* is translated "mutual" when it

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should be "joint," as Wang has it. Instances like these might be multiplied, and they betray a serious lack of familiarity with either English or German law terms or both.

It is also unfortunate that the translator does not adhere to a term once chosen, *Schuldverhältniss* is in one place obligation, in another relation of indebtedness, in still another, debt relation. *Geschäftsfähigkeit* is legal competency S. 104 business capacity (S. 1304), business competency (S. 1307); Wang uses disposing capacity throughout.

If there had been a careful revision of the work, this would not have happened, nor could the serious blunder have passed unnoticed which makes the first two paragraphs of S. 1324 meaningless.

The German codifiers were careful to distinguish directory from mandatory language. The former is indicated by the word *soll*, the latter by the words *muss* or *darf nicht*. This distinction which is essential to the understanding of the code, has not been observed by the translator (see S. 1309–1316), while Mr. Wang was apparently aware of it.

That most of the translation is reasonably well done, does not excuse the blemishes that have been pointed out, and which appeared upon a very cursory examination.

After Mr. Wang's very creditable performance, it was perhaps still proper to undertake a translation that should in a sense be authoritative. In these days of the awakening of comparative jurisprudence in this country, it would be desirable to have some agreement upon standard and accepted equivalents for legal terms in different languages. Here was an excellent opportunity for making a beginning in this direction of which no advantage has been taken.

The copious references to many other codes and authorities, if reasonably accurate, should however make this translation a very valuable handbook in the comparative study of court legislation.

E. F.

Select Essays in Anglo-American Legal History. By various authors. Volume III. (Boston: Little, Brown and Company. 1909. Pp. 862.)

The two earlier volumes of this important publication have been noticed in this REVIEW. (II, 471; III, 126.)

When notice was made of the first volume, occasion was taken to commend the utility of the work, and, with the appearance of this, the con-

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cluding volume, it is appropriate, in view of the admirable manner in which the undertaking has been carried to completion, again to express the reviewer's approval and to repeat the thanks which it is felt are due to the members of the committee of the Association of American Law Schools for the labor and discriminative care which they have devoted to their task.

In the present volume thirty essays are included, each devoted to the historical consideration of particular topics in the law. Twelve of these are within the field of commercial law, five relate to contracts, three to torts, five to property in general, and five to wills, descent, intestacy. The three volumes together contain seventy-six essays.

Aside from the very considerable service which these volumes perform in rendering easily accessible these excellent studies, it is believed that their re-publication will furnish a stimulus to further historical study of a law. Many, indeed most, of the essays, furnish and pretend to furnish only an introduction to, or general survey of, the special fields to which they relate, but by their excellence cannot but fail to furnish both an encouragement and a stimulus to further research. It is not unlikely that this will prove to be the greatest service of these volumes.

The History of Caste in India. Volume I. Evidence of the Laws of Manu on the Social Conditions in India during the Third Century A.D., Interpreted and Examined; with an Appendix on Radical Defects in Ethnology. By SHRIDHAR V. KETKAR. (Ithaca: Taylor and Carpenter, 1909.)

The author intends this monograph to form part of a series dealing with the history of the Hindu caste system, from the earliest Vedic times to the present. Instead, however, of beginning with the most remote antiquity, he sacrifices historical continuity and treats in his first volume a comparatively late period of Indian history, when the main outlines of the present caste system were already firmly established. One cannot but feel that the value of this work on Manu would have been greater, if he had first made a scientific study of the older Indian literature, from which an enormous amount of light could be brought to bear on Manu's treatment of caste. As it is, he scarcely refers to the Veda at all, and his attitude towards the Buddhist writings (to which he only alludes incidentally, promising a fuller treatment in another volume) is marred by an unfor-

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tunate prejudice, which seems to have blinded him to their great value for his subject.

In the second chapter the author gives some brief remarks on the caste system as it exists today. In his definition of caste he makes endogamy the prime determinant; a caste is a group whose "members are forbidden by an inexorable social law to marry outside the group." This is undoubtedly true for the present time. But Mr. Ketkar should have made it clear that this definition does not apply to more ancient times; in particular, it does not apply to the time of Manu, which is the special subject of his book. He himself shows, later on, that Manu distinctly allows a Brahmin, for instance, to marry a lower caste woman. As a general definition of caste, this is unsatisfactory. Moreover, such a definition should refer to the religious character of the laws of caste in India, as well as to their social aspect. This point the author has made clear in later parts of the book.

The remarks on the Theory of Caste are interesting, as showing the standards by which the relative rank of castes is at present determined. Less profitable is the section on Psychology of Caste, which contains little that has not been expressed in better language before.

The chapters on the subject proper, Manu's treatment of caste, show that the author has thoroughly worked over the sources, and in spite of the shortcomings already indicated his account is interesting and valuable. We might wish, however, that his patriotic anxiety to defend the institutions of his country had been made a little less prominent. For this is one of the most curious things about the book; although in the introduction the author speaks of caste as an evil, and seems to concede that the only question is as to the best means of mitigating it, yet throughout the book his efforts seem to be bent towards defending the caste system. This he does, broadly speaking, in two ways. First, he tries to prove that caste in its essential outlines is not very different today from what it was in the days of the Hindu lawgivers. He makes out a fairly good case for this as to Manu; had he gone back a few centuries earlier, he would have found it much harder. Secondly, he points out many real or supposed analogies to caste regulations in Europe and especially in America. Here his remarks are sometimes rather ludicrous, though sometimes very just and worthy of serious consideration by Americans. But if both these arguments were granted, we should still not need to accept the conclusion (which is constantly insinuated, though not openly stated), that some form of the caste system is a laudable or at least a necessary institution. Mr. Ketkar is a Marathi Brahmin, a

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member of one of the proudest castes in India, and is not uninfluenced by that fact.

We have alluded to the author's prejudice against Buddhism. Thus on p. 122, note 7, he says: "Gautama (Buddha) is very often barbarously complimented as a man who fought against caste, and his creed is called a revolt against the caste system. . . . Mr. Rhys Davids has shown the fallacy of complimenting Buddha for breaking caste in his various introductions to the Dialogues of Buddha." This is a gross misrepresentation both of Buddhism and of Rhys Davids (see his *Dial. Bud.*, p. 96 ff.). On Buddha's attitude on this subject Rhys Davids says: "In the first place, as regards his Order. over which alone he had complete control, he ignores completely and absolutely all advantages or disadvantages arising from birth, occupation and social status, and sweeps away all barriers and disabilities arising from arbitrary rules of mere ceremonial or social purity. . . . Secondly, as regards all such matters as we may now fairly call questions of caste outside the Order, the Buddha adopted the only course then open to any man of sense; that is to say, he strove to influence that public opinion, on which the observances depend, by a constant inculcation of reasonable views." These statements, which Rhys Davids elaborates at some length, represent the consensus of opinion of all competent scholars on Buddhism, and it requires only a slight reading in the Buddhist scriptures to show that they are true,—if the reader is at all fair-minded. But they are evidently very different from the views which Mr. Ketkar attributes to Rhys Davids.

Such a series of works as the author outlines would form a very desirable addition to our knowledge of Indian civilization; but Mr. Ketkar, in spite of his manifest cleverness and his Western education, is still too good a Brahmin at heart to accomplish the task in the right way.

FRANKLIN EDGERTON.

The Crisis of Liberalism: New Issues of Democracy. By J. A. HOBSON. (London: P. S. King & Son. 1909. Pp. 284.)

This volume is made up of articles which have appeared in various periodicals in recent years. Although the author states in his preface that they have been "composed with the definite object of relating the present constitutional struggle to the larger and more important issue of the future of liberalism" in England, none of the chapters have more

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than a very general bearing on the budget struggle of 1909. Unfortunately the date and place of original publication of the various papers are not indicated. In any volume constructed in this way there is bound to be more or less of repetition of ideas and even of language, as well as some irrelevant matter.

The liberal party, Mr. Hobson argues, has now reached a crisis in its history, due to the fact that certain of its leaders, powerfully supported by the rank and file of the party, have committed themselves to a programme of reform measures designed to improve the material and moral condition of the people. Liberalism of the old *laissez faire* type is dead; it is the task of the new liberalism to substitute for liberty negatively conceived as the absence of restraint, the positive idea of liberty," which consists in the presence of opportunity. This fuller and more positive liberty which the author wishes the liberal party to champion is best expressed, he thinks, in the phrase "equality of opportunity." The equal opportunities now required in order to secure the real freedom of the people are found to be seven in number. At the head of the list stands equality of opportunity in the use of land, which may eventually necessitate state ownership of urban and even of much rural land, while it demands at once the taxation of the "unearned increment." Equal access to sources of power should be definitely made a part of public policy before the country falls into the hands of the threatened power monopoly. Equality of opportunity in respect to the means of transportation "requires that the railroad system shall be owned and operated by the nation." The financial monopoly threatens to become the greatest of all the trusts, consequently equal opportunity in industry and agriculture necessitates a scheme of state credit. It is Mr. Hobson's belief that "the whole of the money lending business from the pawnshop up to the largest discount operations will in time pass into state control." Equal justice, or equality of access to the courts, cannot be said to exist as long as the expense to private litigants is so heavy that "the owner of the long purse. . . . . can beat down, choke off or wear out his poorer adversary." Real freedom for the small merchant, the clerk, and the workingman cannot be enjoyed without economic security; in the absence of a safe and economical system of insurance, such as the state only can furnish, "they and their families may be plunged into poverty and its attendant degradation" by any one of a number of contingencies which cannot be foreseen and against most of which even the best paid workers can make no adequate provision. Finally, equality of opportunity requires a broad policy of state education, and for the

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"nationalization of knowledge and culture" Mr. Hobson make a strong plea.

One important aim of this programme of equalizing opportunity is to abolish poverty which together with the sweating evil, unemployment and old age destitution, is one of the "new issues of democracy." That Mr. Hobson's new liberalism would practically amount to socialism he denies, though he seems to admit that it looks too much like socialism to secure the adherence of the entire liberal party. But unless English liberalism grasps this last chance to express its traditional principles in these positive forms of liberty, "it is doomed to the same sort of impotence as has already befallen liberalism in most of the continental countries."

In order to carry out such a programme the democratic state must make solid and secure its theoretical foundations. Such an idea, at all events, seems to be the excuse for including a chapter entitled "The Re-statement of Democracy," in which the author endeavors to substitute an "organic" for an "individualistic" conception of society, in order to reconcile universal suffrage (including "votes for women") with "government by the best."

But before English democracy can make any headway with these "new issues" several political reforms must be accomplished. First of all, naturally, the lords must be deprived of their vote. This "surgical operation" on the house of lords, however, is only a prelude. The cabinet's encroachments on the liberty and authority of the elected representatives of the people must be checked; the franchise should be extended, parliaments made shorter, proportional representation introduced, plural voting abolished, members of parliament paid salaries from the public treasury and election expenses also made a public charge. Most important of all political reforms, after eliminating the hereditary chamber, is the adoption of the referendum. The encroachments of the lords on the rights of the commons, Mr. Hobson considers to be the more serious because it is defended on the essentially false doctrine that the veto of the upper house forces a referendum on important measures. The fallacies of this argument are exposed and it is argued with much force that the best solution of the problem is to be found in the adoption of a real referendum such as is found in Switzerland.

Few readers will be able to accept Mr. Hobson's views in their entirety; most will agree with him only in part, but scarcely anyone will deny that he states his views clearly and forcibly. The essays brought together in this volume are stimulating and constitute a real contribution to the literature of radical democracy. CHARLES C. WILLIAMSON.

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A Century of Empire. By SIR HERBERT MAXWELL. (London: Edward Arnold, 1909. Vol. I. 1801-1832. Pp. 352.)

When an author places a verse of Kipling's "Recessional" upon his title page and dedicates his work "with affectionate regard to my leader in many a hard fought campaign, the Right Hon. Arthur James Balfour, M.P.," one knows that the work will be written from a conservative point of view and this expectation is not disappointed in reading Maxwell's interesting book. He defends the tories frequently from the attacks made upon them by Sir Spencer Walpole in his *History of England* and, especially, places the career of Lord Castlereagh in a far more favorable light than most historians. The work is not, however, one of an unbending partisan; but frankly admits mistakes of the tories and gives due meed of praise to many of the whigs and their measures. The writer has set himself to write a political history and does not linger long on social and economic phases. His style is clear and interesting, though sometimes he sacrifices syntax in his desire to produce an effect of vividness. Good use is made of the *Creevey Papers* and access has been had to the Salisbury manuscripts, which throw a new light on some portions of the narrative. In general, the allotment of space to various events is well done, though too much time is spent over the unhappy marital life of George IV. The author is a great admirer of Wellington and Nelson, and the accounts of their campaigns are very well told. The narrative of the war of 1812 is naturally somewhat prejudiced and inaccurate. The setting off of the capitulation of Fort Mobile against the battle of New Orleans is rather ridiculous, and no good account of the causes of the war, nor of the treaty of Ghent is given. On page 184, Hale is a misprint for Hull. The work is provided with brief footnotes, where the newer authorities are used or reference is made to disputed points, and there is a comprehensive, but not exhaustive, index. The excellence of the typography and the engravings of six of the important characters of the period add to the attractiveness of the book. One asks, however, why no portrait of Pitt or of Wellington was included. Sir Herbert Maxwell has been so successful in presenting a fresh picture of the times that his later volumes will be eagerly awaited and his work may be commended, as a well-written and clear narrative of political events, usually accurate in its scholarship and yet popular enough for the general reader.

B. C. STEINER.

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The Life of W. J. Fox, Public Teacher and Social Reformer. 1786–1864. By RICHARD GARNETT. Concluded by EDWARD GARNETT. (New York: John Land Company. 1909. Pp. xiii, 339.)

Readers and students who gave so cordial a reception to Mr. Graham Wallas's *Life of Francis Place* nearly twenty years ago will welcome the new life of W. J. Fox—a biography which was needed to complete the circle of radicals and reformers who were leaders of the vanguard in the first half of the nineteenth century. It is indeed unfortunate that the work of compiling the life of Fox should twice have been interrupted by death. Fox's daughter, Mrs. Bridell Fox, was the first to undertake the task, and the documents, letters, notebooks, and extracts from current political and religious literature, which she had collected, were bequeathed by her to Dr. Richard Garnett. Dr. Garnett in his turn left the work uncompleted, and it is as a task that required to be done, rather than a work which had engrossed his mind and affections that Mr. Edward Garnett has at last finished the long pending biography. It is indeed a pity that Dr. Garnett's last work could not have had a more thorough and careful preparation for the press. Numerous misspellings—such as "affect" for "effect" and vice versa, "vacation" for "vocation" and even one so obvious as "deseriont" for "desertion" —mar its pages. Grammatical errors and involved construction make the reading difficult and sometimes irritating. Had Dr. Garnett lived to see his book completed, it is hardly possible to think that he would have presented it to the public in so imperfect a shape.

For the life of Fox there existed fortunately a large amount of material. In 1835, when he was 49 years of age, Fox began to write an autobiography. This was never carried beyond his early manhood, but it gives an account of his family, his childhood, his education, his start in life as a bank clerk, and his choice of the unitarian ministry as his profession. During the middle years of the nineteenth century, Unitarian ministers were exercising an influence on the thought and politics of England out of all proportion to the numerical strength of the denomination. They were especially prominent on the political platform and as editors and leader-writers of liberal newspapers; and Fox as a preacher, a platform orator, a writer and a newspaper editor, was by no means the least influential among the leaders of English thought between the end of the French wars and the death of Lord Palmerston. During his varied career, Fox was brought in contact with many of the more advanced

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thinkers in politics and economics. He himself stood steadily for Liberalism and democracy—sometimes of a more advanced type than was acceptable to Cobden, Mill, or Bright. In spite of occasional differences of opinion, however, he enjoyed the respect and esteem of many of the best known authors and statesmen of the mid-nineteenth century. For many years he carried on a correspondence with Harriet Martineau, and Miss Martineau's letters to Fox were among the few that escaped destruction at the autocratic command of their writer. Given his choice in 1857 between preserving the letters he already had, and continuing to hear from her, Fox chose to keep his letters. True to her word, Miss Martineau wrote to him no more, but the letters in existence extend over the years from 1828 to 1857, and, while Dr. Garnett has respected Miss Martineau's desire that none of her letters should be published, he gives many side-lights on her character from the letters which serve to modify the somewhat unfavorable impression that Miss Martineau managed to give of herself in her autobiography.

Like John Stuart Mill, Fox was a strong supporter of the rights of women, and the adherents of the women's movements of modern times could find in his life some useful arguments in favor of their cause. Whether the question was religious equality, the enfranchisement of the working classes, women's rights, poor law reform, or popular education, Fox was always to be found on the democratic side. He was, however, essentially a preacher and an orator, and eloquence and oratory are transient and evanescent. Hence to the present generation, Fox is scarcely more than a name—a name that perhaps Dr. Garnett's biography may save from utter oblivion.

A History of Canada 1763–1812. By C. P. Lucas. With two Appendices and 8 Maps. (Oxford: Clarendon Press. 1909. Pp. 320.)

This is a book by Sir Chas. Lucas, the present head of the Dominion's Department of the British colonial office, already widely known as the author of several volumes on the *Historical Geography of the British Colonies*, *The Canadian War of 1812*, etc. The present volume deals with the period between the establishment of civil government in Canada under British rule and the outbreak of the war with the United States. All students of Canadian history are aware how much is to be done before we can have an adequate treatment of the period between the

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conquest and the rebellion of 1837. Much has been done indeed in the form of monographs and special biographical studies, but a large part of the literature dealing with the middle period of Canadian history is vitiated by the partisan attitude of the writers and has moreover been written from inadequate information and without proper access to first hand material. Sir Chas. Lucas' book is written strictly from the impartial standpoint of the scientific historian, is based throughout upon official and authoritative documents and constitutes one of the most important contributions to Canadian history of recent years. The book no doubt in accord with the authors intention, is devoted primarily to political and military, rather than to social history but contains an excellent chapter (pp. 208–235) on the settlement of the loyalists. The second chapter offers a discussion of the causes of the American War of Inaependence intended to correct rather distorted view of the rights and wrongs of the great colonial controversy which has hitherto been freely adopted by British historians. The specially prepared maps which accompany the volume add greatly to the interest of its perusal.

STEPHEN LEACOCK.

Retrospections of an Active Life. By JOHN BIGELOW. (New York: The Baker & Taylor Company. 1909. Three volumes. Pp. xiv., 645; 607; 684 including Index. Illustrated.)

These three bulky volumes, covering fifty years of the long and useful career of an American patriot who helped to save the Union and to negotiate the withdrawal of France from Mexico, are so full of historical sidelights, so interesting in their disclosures of prominent men whose letters appear and in revealing the character and development of the optimistic author himself, that the reader after he has finished them wishes for more. Intermingled with the letters which constitute the larger part of the volume are brief but keen explanatory comments of the author furnishing glimpses of his later philosophic views on the events of his earlier years.

About half of the first volume covers the life of the author before the civil war: the simple life of pleasant boyhood days which he contrasts with the marvellously changed life of his maturity and old age; the student life in academy and college (1830–35) and in a law office; a brief experience as teacher of belles-lettres and history in a girl's school (1838); his period of law practice (1838–48) during which he reviewed

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books, wrote magazine articles, got experience in journalism, and (in 1845) entered the arena of higher politics as an advocate of a state constitutional convention to secure needed constitutional reforms; and his remarkable and successful newspaper career as a partner of W. C. Bryant in the publication of the influential New York *Evening Post* for over a decade (1848–61) during which he visited Jamaica (in 1850) and Hayti and St. Thomas (1853–4) to study the African as he developed under freedom, and later with his family visited Europe (1858–60) where he met many celebrities and formed many acquaintances which contributed to the usefulness of his later public career.

Among the illuminating letters of the period of his newspaper career is the following of November 14, 1860 from R. B. Rhett, Jr., editor of the *Charleston Mercury*, in reply to Bigelow's inquiry whether a special reporter sent by the *Evening Post* would encounter any difficulties in attending the secession convention to report the debates:

"In my opinion your reporter would run great risk of his life, and I am sure would not be allowed to report proceedings. Representing that paper he would certainly be tarred and feathered and made to leave the state, as the mildest possible treatment consistent with the views of the people here.

The *Mercury* and *Courier* will both have competent reporters present, and in that way, through these journals, you may expect to gain all the information necessary. No agent or representative of the *Evening Post* would be safe in coming here. He would come with his life in his hand, and would probably be hung."

Early in 1861, having realized the modest competence of $175,000, Bigelow severed all connection with the *Evening Post*, with the purpose of entering upon a congenial life of literary leisure; but his plans were postponed by the exigencies and attending incidents of war.

The chief value and interest of the "Retrospections," of course, lie in the authoratative documentary materials contributed to the civil war period by the man who participated largely, actively, and with distinction, in some of the most important events of that period. First as consul and press agent at Paris, and later as charge d'affaires and minister plenipotentiary to France, toiling constantly and systematically, he rendered efficient and extraordinary services to his country— especially in dispelling the impressions which Confederates sought to inculcate, in frustrating the Confederate attempt to fit out a navy in France, and in aiding Seward to induce France to withdraw from Mexico. The larger part of his correspondence relates to France in Mexico.

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Among the most interesting dispatches of Bigelow to Seward is a long one (marked "Unofficial," of August 21,1865 against the "abstract folly of making ourselves the armed champion of all or of any of the Spanish American states," doubting whether any power in Europe would formally sustain "our pretentions under what is called the Monroe doctrine," and suggesting that the United States, "short of recognizing Maximilian, should give France every possible evidence of friendship." Assuming from the tone of Seward's recent notes that this policy did not commend itself to the public men of the United States, however. he said "I bow to superior wisdom and shall endeavor to carry out your instructions with fidelity."

Mr. Bigelow always shows the greatest respect for Seward, from whom he had differed politically before the formation of the republican party and in whom he had complete confidence during the entire term of five years service under him. "I have always felt," said he in a letter to Edward L. Pierce in 1892, "that his management of our foreign affairs during the war was wiser than he was himself aware." In his later estimate he adds: "Seward was the only member of Mr. Lincoln's cabinet who from the beginning to the end of the Civil War never for a moment lost sight of the all-important fact that the time must inevitably come when the people of the free and the slave states would have to sleep in the same bed or to both sleep their last sleep as popular sovereignties. I may add that he was the only member of that cabinet whose lips never gave public utterance to a word of censure of any of his colleagues, which goes far to explain the fact that to the last he was the minister whom Mr. Lincoln most uniformly consulted, whether the subject pertained to his own or any other department. Of this fact the diary of Mr. Secretary Welles furnishes an abundance of the most conclusive evidence."

Mr. Bigelow's volumes will prove useful both to student and citizen. His sound views of public service are well illustrated by his active practice. Though he accepted the consulate at Paris with the understanding that the regular duties would not be considerable, he found that all his time was taken with rapidly increasing responsibility. By 1865 the labors of the consulate proper had increased about five times what they were before the war. Although Bigelow was busy with the regular work of the office, attentive to every detail and resourceful in his plans for the future, he found time to recommend reforms to strengthen the consular and diplomatic service and the civil administration by a system of appointments based on special training, and promotions as a reward for

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faithful service. He believed that public servants should do honest, efficient work. At the legation at Paris, when he succeeded Dayton whose dispatches had not been indexed, acting on his responsibility and in the interests of his government, he got rid of the ignorant secretary at the first convenient opportunity and took prompt steps to ascertain the condition of the neglected archives. Though his health suffered seriously from his confinement and the heavy cares incident to his new position, he patriotically remained at his post until he felt that his stay was not longer a matter of special importance and that he could retire without inconvenience to the public service. In resigning he wrote Seward: "I have no longer the ambition of youth which might have found in the honors of my present position compensation for its cares. . . . . I am homesick."

JAMES MORTON CALLAHAN.

The Cameralists. The Pioneers of German Social Policy. By ALBION W. SMALL. (Chicago: The University of Chicago Press. London: T. Fisher Unwin. 1909. Pp. xxv + 596.)

The true and really fruitful lessons of past human experience are rapidly being disclosed through the careful and sympathetic research of the adequately equipped scholar. This is notably the case in the related and overlapping domains of political science, political economy, and sociology. In the present work, as in its predecessor, *Adam Smith and Modern Sociology*, Professor Small, through his just criticism, painstaking analyses, and luminous selections from the writings of the cameralists—many of them absolutely unknown to the average student—has provided us with a trustworthy guide to a highly important phase of evolution in politico-economic thought and the corresponding administrative practice. It is at once a source-book and a genetic study of social policy in Germany.

"Cameralism" (from German *Kammer*, Latin, *camera*), the author explains, "was the routine of the bureaus in which the administrative employees of governments, first of all in the fiscal departments, did their work; or in a larger sense it was systematized governmental procedure, the application of which was made in the administrative bureaus." The "cameralists of the books, as distinguished from the cameralists of the bureaus, although the former class was usually recruited from the

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latter, were the men who worked out for publication, and especially for pedagogical purposes, the system of procedure in accordance with which German governments were supposed to perform their tasks..... We might coin the word "*fiscalists*," and it would be more appropriate to their actual character than either of the terms by which they have been known."

In the meager literature dealing with them, the cameralists have been classed as economists rather than as writers on political theory or practice. This error Professor Small has taken great pains to correct. More properly speaking, they were practical political scientists, although they were concerned especially with the fiscal needs of the state and with the great question which those needs involved: how to raise money. "To the cameralists the central problem of science was the problem of the state.....Their whole social theory radiated from the central task of furnishing the state with ready means." Thus, in the very outset, the author has rendered a very important service by clearing away the misconceptions of preceding writers. His criticisms of Cossa, Kautz, Roscher, Bluntschli, and others are decidedly clarifying.

Professor Small has confined his more detailed or intensive study of cameralism to the century between the *Deutsche Fürstenstaat* of Sekkendorff (1655) and the *Grundsätze der Polizei, Handlung und Finanz* of Sonnenfels (1765), giving Justi the most prominent place "in the center of the picture." However, to provide a proper historical background for this study, he has made a rapid survey of cameralistic writings during the preceding hundred years devoting a short chapter each to the "Civics of Osse" (1506-1556) and the "Civics of Obrecht" (1547-1612). The *Testament* of Melchior von Osse appeared in 1556; and it was edited with luminous notes by the celebrated Christian Thomasius in 1707. In various ways the book, with the author's discussion, gives earnest of the great value of this whole cameralistic literature for the student who has an eye to see. It throws light on the actual conditions of the contemporary German principality; and it reveals the highly practical motives of these early students of the functions of the state. It is significant, for instance, that it was written in the German tongue, in "consideration," says Osse, "that this memorial might come to the knowledge of laymen, untaught in the Latin language, and the desire that they might not be hindered in reading it by the intermixture of Latin words." Equally enlightening is the plea for vocational instruction in political science. By Osse, as well as by Justi a century later, the demand is made for more effective university training in civics and political admin-

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istration. It can hardly be doubted that the common sense of these almost forgotten students has had much to do with the creation of the German university—which in reality is a state-university— as an institution devoted primarily to social service.

Turning to his special task, the author has devoted a chapter each to the "cameralistics" of Seckendorff, Becher, Schröder, Gerhard, Rohr, Gasser, Dithmar, Zincke and Darjes, following with five chapters (pp. 285-480) on Justi and four chapters (pp. 481-585) on Sonnenfels. The task is well done. The book is the result of much careful research and of much fruitful comparison of contemporary literature and criticism. Of its value as a source-book one may judge from an example: Dr. Small has "compressed the most important sections" of Justi's *Staatswirthschaft* into 411 numbered paragraphs, filling 62 pages of his volume.

One great lesson is taught in this study of politico-economic thought since the Reformation: the paternalism of the petty principality was the harsh school in which the German people got the decisive trend toward their present distinctive ideals of citizenship and social duty. Out of these ages of discipline has arisen the spirit of collectivism which distinguishes the German state. The author's opening generalization is sustained by his whole investigation:

"Whether the Germans have overemphasized the collectivistic principle, future centuries must decide.... Whether the collectivistic principle is ever beneficially to modify democracy or not, there is hardly room for debate upon the proposition that in sheer economy of social efficiency Germany has no near rival among the great nations. Whether the method of this achievement costs more than it is worth, is an open question. That, in view of what it has accomplished, it is worth understanding, is beyond dispute. The explanation of the German type of success cannot be reached without calculating the significance of the cameralists."

GEORGE ELLIOTT HOWARD.

Privilege and Democracy in America. By FREDERIC C. HOWE, Ph. D. (New York: Charles Scribner's Sons. 1910. Pp. xii, 315.)

This work contains an interesting statement of the single tax doctrine. Dr. Howe attributes pretty nearly all of the political and economic ills that afflict the American state to the system of private owner-

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ship of land and to the tariff and internal revenue taxes imposed by the federal governmnet. These ills are bound to increase as long as the present system remains. The remedy proposed is the virtual destruction of private property in land by taxing it to the limit of its rental value, together with the repeal of the tariff and all other restrictions upon the absolute freedom of trade and commerce, and governmental ownership and operation of the railroads so as to throw open these highways of the nation to all upon equal terms. This plan, Dr. Howe tells us, may be expected to insure equality of industrial opportunity, stimulate production, equalize distribution by eliminating the nonproducing landlord and securing to the laborer his fair proportion of the fruits of production, destroy monopolies with their attendant evils, and supply the government with such an abundant revenue that with all other taxes abolished the public income would be sufficient to permit vast extensions and improvements in the public service.

Dr. Howe's book is open to the criticisms usually applicable to attempts of this kind to explain complex industrial conditions by reference to a single principle. His discussion is entirely too one-sided. He dwells upon the evils of the present system, without considering its compensating advantages or inquiring whether the evils might not be eliminated without sacrificing the entire system. He says scarcely a word as to how the administrative difficulties that beset his plan are to be solved, or as to whether they can be solved at all. He does not tell us what provision shall be made for those persons who have invested their capital, often derived largely from other sources, in real estate, paying the full present value of the same. And if the confiscatory single tax would destroy private land monopoly and bring the land into productive use, it would also reduce all landholders, rich and poor alike, to the level of perpetual rent—paying tenants, from which condition there would be no escape; but this possibility is not touched upon at all.

These are only a few of the objections that will occur to any one who reads the book. The very clearness of Dr. Howe's statement merely serves to reveal with greater distinctness the defects in the extreme single-taxer philosophy.

J. WALLACE BRYAN.

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A Memoir of the Rt. Hon. William Edward Hartpole Lecky. By HIS WIFE. (Longmans Green and Company. New York and London: 1909. Pp. xvii, 432.)

It is now nearly seven years since the death of Lecky; but he was only 65 years of age when he died, and many of his contemporaries and of the men with whom he was actively associated are still prominent in English political, literary and social life. It was therefore a somewhat difficult task that Mrs. Lecky attempted when she undertook to write a memoir of her husband, and it must be conceded that she has accomplished the task with much tact, delicacy and discretion. Some of the expedients to which she has had recourse are, however, unsatisfactory if this is to be the final and authoritative life of the historian. Dashes in places of proper names, when the use of these might be disagreeable to survivors, may be necessary, but they take much from the full understanding of the passages in which they occur. Mrs. Lecky has been so careful to say nothing about other people, to which exception might be taken, that she has ended by almost isolating Lecky from his environment. The old title so frequently used for a biography "life and times of" the personage of whom it is written, would not be suitable for this memoir; for it is of Lecky alone that it is written with only so much of his times and surroundings as was necessary to make the story in any degree comprehensible.

Mrs. Lecky has wisely allowed Lecky to speak for himself wherever possible. The memoir includes extracts from a large number of his letters, many of them written to Americans. Lea, the historian of the Inquisition, was a steady correspondent, and there are several letters of appreciation from Lecky to Mr. James Ford Rhodes. Lecky's speeches and pamphlets, that are already in print, have not been drawn upon for the biography. The only exception to this rule is the speech on Burke, delivered in 1897 at Trinity College on the veiling of Burke's portrait in the dining hall. Lecky had a profound admiration for Burke's statesmanship, and Mrs. Lecky has included the whole of this speech in one of the closing chapters of her volume.

Lecky began life as a liberal, and Mrs. Lecky's memoir might be entitled "the evolution of a conservative", so clearly do the extracts from Lecky's letters show the transition of his opinions from the moderate Liberalism of the sixties and seventies, to liberal unionism in 1886, and gradually towards conservatism at the close of his life. The transition was accompanied by the growing distrust of democracy which is clearly visible in his "democracy and liberty," published in 1896; and by the

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deepening pessimism which shrouded the later years of his life. In view of the present unanimity of English political parties on the old age pension question and the anxiety of the conservatives to claim equal credit for the pensions with the liberals, Mr. Lecky's opinon of the project in 1899 is of interest. "To my mind," he wrote to Mr. Booth, "the old age pension project is one of the most dangerous of all forms of state socialism. . . . I am afraid we shall have a good deal of trouble on this matter, and that the unionist party may commit itself to a policy which is sure to lead to great corruption and increase of taxation." The study of history had convinced Lecky that political prophesy was not the domain of the historian. Consequently it is not to be laid to his discredit that many of his gloomy forebodings for the future of England and of Ireland do not seem to be on the way to fulfillment. It may be conceded also that pessimism and a rooted distrust of democracy are not helpful to an understanding of the future development of great self-governing nations. For his disinterested, fair-minded, painstaking research into the past, and for his lucid, well-balanced presentation of history, the present generation owes an immense debt to Lecky; but it is not necessary to adopt his pessimistic outlook, and to relinquish all hopeful faith in the gradual rise of humanity in the scale of civilization and morals.

Gathorne Hardy, First Earl of Cranbrook. A Memoir. With Extracts from His Diary and Correspondence. Edited by Hon. Alfred E. Gathorne-Hardy. 2 volumes. New York: Longmans Green & Co. Pp. xi, 381; vii, 408.)

Gathorne Hardy for nearly forty years was one of the prominent and trusted leaders of the conservative party in England. During the whole of his active political life, he was the contemporary and opponent of Gladstone; and from 1868 to 1892 he ranked with Disraeli, Salisbury and Sir Stafford Northcote—afterward Earl of Iddesleigh—as a holder of high cabinet office, when the conservatives were in power; or as a fighting head of the party when in opposition. These two volumes of his memoirs and correspondence are consequently the most important addition to English political biography of the nineteenth century since the appearance of Morley's Life of Gladstone. They help to fill the gap in the line of conservative leaders which still awaits authoritative biographies of Derby, Disraeli, and Salisbury. They take up the story of the conservative party before it is dropped in the Malmesbury

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Memiors, which were published in 1884 but which carry the history only to 1869. Between that time and the end of the century, before the publication of the present volumes, the only authentic and complete life of any conservative leader was Winston Churchill's Life of his father; and Lord Randolph Churchill's career was so short and meteoric that his biography goes but a short way in helping to a complete political history of the Victorian era.

Gladstone had been in parliament for 23 years before Gathorne Hardy was elected for Leominster in 1855; but Gathorne Hardy, when he entered the house of commons, was 41 years of age—only five years younger than his great political opponent. Gathorne Hardy was in parliament only three years before he was appointed to office. In 1858 he became under secretary for the home office in Derby's short-lived ministry, and from that date to 1895 when on account of age he declined to join the Salisbury administration, he held office continuously whenever the conservatives were in power. He was successively president of the Poor Law Board, home secretary, secretary for war, secretary for India, president of the council and chancellor of the Duchy of Lancaster. After 23 years in the house of commons, he was promoted to the peerage, and sat for 28 years, until his death in 1906, in the house of lords. The Marquis of Salisbury, as Robert Cecil, had entered the house of commons in 1853, two years previously to Gathorne Hardy, and in 1866 he had joined Lord Derby's administration as secretary for India. Gathorne Hardy was closely associated both with Disraeli and with Salisbury during the fifty years of his political life, and the great value of his biography is in the picture it gives of conservative policies and conservative administrations during the period when the fortunes of England were under the control alternately of Disraeli, Gladstone and Salisbury. Gathorne Hardy was preëminently a statesman of the type that may be described as safe and sane. He was upright, honorable, unemotional and trustworthy, without enthusiasm either for his leaders or the politics of his party, and untouched by the democratic tendencies of the age. He stands out in complete contrast to Gladstone, whose idealism and burning zeal made a crusade of every cause he undertook and who infused intense conviction into every policy he adopted. This profound difference of constitution and temperament made the antagonism between Gathorne Hardy and Gladstone much more profound and bitter than is usual between the leaders of English political parties. It colours every allusion to Gladstone in the letters and the diaries. The two men regarded every question from opposite points of view —a fact

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which makes the present memoir both a complement and a corrective to Morley's Life of Gladstone. The two should be read side by side and the two points of view taken into account, in order to arrive at a fair comprehension of the course of English politics from 1855 to the end of the nineteenth century. Mr. Alfred E. Gathorne Hardy has edited his father's papers with care and discretion. The book would have been easier reading, had Mr. Gathorne Hardy used the third instead of the first person, in his connecting paragraphs. The diaries and letters were of course written in the first person, and the intrusion of a second individuality making use of the same form occasionally causes some needless confusion.

A. G. PORRITT.

The People's Law or Popular Participation in Law-making, from ancient Folk-moot to modern Referendum. A Study in the Evolution of Democracy and Direct Legislation. By CHARLES SUMNER LOBINGIER. (New York: The Macmillan Company, 1909. Pp. xxi, 429.)

The title of this work is somewhat misleading. It is not a complete history of popular legislation but mainly an account of popular participation in constitution-making in the United States. Judge Lobingier, it is true, devotes some attention to popular government before the American Revolution, and one part of his work is entitled, "Popular Participation in Law-making outside of the United States," but his account of the referendum in other countries is practically valueless, and the same statement may perhaps be made with reference to the discussion of early forms of popular participation in government. The Swiss referendum is excluded from treatment.

After a brief and unsatisfactory discussion of primitive popular assemblies and of folk-moots and craft guilds, Judge Lobingier discusses the democratizing influence of Calvinism and of the church covenants, and devotes a chapter to the popular movements in the British Islands before and during the Puritan period. He then discusses somewhat fully popular government in colonial America. The discussion here is perhaps the most unsatisfactory in the book. The author follows the development of popular government in the Colonies in so far as it has to deal with the English Puritan in New England and with the Scotch Presbyterian in the Southern colonies (p. 67). Puritanism and Cal-

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vinism are the two fundamental causes of democratic government in England and America, according to Judge Lobingier, and this somewhat fanciful view is carried to extremes (p. 41). Where he knows of democratic movements, such movements must necessarily be due to a Puritan or a Scotch Presbyterian, and the author either ignores or does not know of movements which he might find it difficult to explain in this way. The discussion here is thoroughly uncritical, and the interpretation erroneous. Judge Lobingier does not get far away from the position taken by many uncritical writers, that the whole system of popular government in the United States originated in New England and somehow permeated the rest of the country. In the book under review what of democratic government cannot be attributed to New England finds a ready and easy explanation in Calvinism. The influence of New England and of the town meeting must be given its full weight, as must also the democratic influence of Calvinism, but the whole development of this country cannot be explained by these influences. Something must be attributed to the common English race and traditions of popular government; something to the English forms of popular local government in towns, vestries, and manor courts, with which the earlier settlers in America were familiar; something to the character of the country to which the settlers came; these are perhaps the most important influences in developing popular government in the American colonies, yet they are almost entirely ignored by Judge Lobingier. A thorough knowledge of the local organizations in the colonies during the years 1774–1776 would perhaps have shown the author that popular institutions were not confined to any particular sections and could not be explained by any one set of causes such as he employs.

When he reaches the period of early constitution-making in 1776 the author is on firmer ground, and his study of popular participation in constitution-making is the most satisfactory, as it is the longest portion of his book. Here, however, Judge Lobingier suffers from the attempt to apply the views laid down in the earlier portion of his work. He fails to appreciate the influence of the theory of the social contract and of the distinction between constitutions and statutes as leading to the development of a method of framing constitutions different from that for enacting statutes.

In his treatment of constitution-making in the states the author's work is, in the main, accurate, though there seems hardly to be much reason for his manner of grouping the states, and the inclusion of states within the grouping is sometimes actually wrong. There are some errors,

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and there is sometimes failure to use accessible information. The account of constitution-making during the revolutionary period often suffers from a failure to use all material, and some of the statements, are actually erroneous on this account. New Hampshire did not get the idea of an independent convention from Massachusetts; neither can be said to have obtained it from the other, but an independent convention was first suggested and employed in New Hampshire. The Alabama (1819) plan of constitutional alteration was probably an adaptation of that first employed in the Maryland constitution of 1776, of which the author seemingly does not know (p. 214). If so much emphasis were to be laid upon the cases where there has been a failure to obtain popular ratification of constitutions in recent years, a fuller reference should have been made to the action of the Kentucky convention of 1891. The chapter on the law relating to popular ratification is fragmentary and highly unsatisfactory.

As has been suggested, Judge Lobingier's work is not a comprehensive history of popular legislation. Even as a history of constitution-making in the United States it is not well-proportioned. It is marred by fanciful theories, and though Judge Lobingier's facts are interesting and have been gathered in many cases with great industry and thoroughness, his interpretation of the facts is often misleading. The work is mainly historical in character, and is animated throughout by a somewhat uncritical enthusiasm for popular legislation. There is practically no critical discussion of the uses and limitations of the referendum, or of the extent to which it has actually been employed. The value of the study lies in its account of constitution-making and revision, but practically nothing of a critical discussion of the working of the constitutional referendum appears. There is no account in the book of the development of the municipal referendum in the United States in recent years, and only a bare statement regarding the recent development of the referendum upon state statutes. Judge Lobingier has gathered much information which will be of value to later students, and his principal service is in having gathered such material not in the use to which he has put it, although his work will be of much service as presenting a résumé of the subject.

W. F. Dodd.

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The Repeal of the Missouri Compromise. By P. ORMAN RAY. (Cleveland: The Arthur H. Clark Company. 1909. Pp. 315.)

In this volume the author attempts to establish an explanation of the origin and authorship of the repeal of the Missouri compromise, which is in some respects different from that generally accepted. The thesis advanced is that the repeal must be explained in the light of Missouri local politics rather than from the standpoint of national politics. Most historians have founded their judgment as to the origin of the repeal largely upon the evidence to be found in the pages of the *Congressional Globe*. Rhodes and Von Holst, to be sure, have perceived the advantage of approaching the question from the standpoint of Missouri politics, but no one has hitherto brought out this side of the question so fully as does Professor Ray. As a result of his study of this phase of the subject, he arrives at the conclusion that the real author of the repeal was not Douglas but Senator Atchison of Missouri. The evidence, however, upon which this conclusion is based, though cleverly presented, is nevertheless somewhat fragmentary and partly conjectural. One is inclined to suspect that Professor Ray sometimes attaches undue weight to bits of evidence that seem to point to his conclusion. Nor does he appear to be in every respect entirely consistent. As to Douglas' championship of the repeal, the author asserts that there was no political necessity compelling him to "adopt a course so manifestly dangerous and which in its outcome wrecked his career" (p. 21). But in another place, he presents very forcibly the political considerations which induced Douglas to father the measure, These were, first, that he would enhance his own popularity generally by championing the principle of popular sovereignty embodied in the repeal, and, secondly, by "placing the radical wing of the southern democracy under obligations to himself, would very materially increase his chances of obtaining the presidential nomination in 1856" (p. 203). These inducements would seem to have been amply sufficient for a man of Douglas' type, without the additional motive of assisting a political and personal friend (Atchison).

Professor Ray has carefully examined all the available material relating to his subject, and in elaborating the conditions in Missouri bearing upon the final *dénouement*, he has performed a real service.

J. M. MATHEWS.

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Du Combustible en Temps de Guerre. By Jean C. Pilidi. (Paris: A. Pedone, 1909. Pp. 410.)

The enormous increase in the number, tonnage, and swiftness of warships within recent years has made the means of furnishing them in their operations in time of war with supplies of coal and oil, a question of increasing difficulty and importance. The possession of coaling stations is of vital interest to a state when war is to be carried on at points remote from the home country. Failing such stations the question immediately arises for a belligerent as to the extent to which neutral ports may be used to obtain the necessary supplies. On no point did the delegates to the Hague conference find it harder to agree, and it can scarcely be hoped that the compromise they reached has satisfied the conflicting interests. Then there is the further question between neutrals and belligerants whether so important an article of commerce as coal is to be considered as absolute or as merely relative contraband.

In the solution of these difficult problems the author of the monograph presents an arrangement of material which is at once clear and orderly; theory and practice are invariably stated before proceeding to discussion, and this last is conducted along the lines of a true French instinct for logic. In the opening chapter his attitude on the importance of naval and coaling stations is stated in the strongest terms: "C'est la possession de bases de navigation 'certaines', dans des conditions pouvant repondre à l'éventualité de toutes les nécessités stratégiques, qui est la consécration même de la puissance maritime d'un État." Nations which do not possess such stations are, he asserts, reduced to the alternative of discovering some practical method of recoaling on the high seas or of having recourse to arms to secure enforced cessions of territory for this purpose in case voluntary ones cannot be obtained.

But the most interesting discussion of the monograph is that which deals with the situation of a power when it permits a coaling station, which is part of its territory and under its nominal sovereignty, to be used by the lessee in time of war. It would seem that such use by the belligerent lessee would be equivalent to setting up a base of operations upon the territory of a neutral. To permit this use, M. Pilidi thinks, would be a clear violation on the part of the nominal sovereign of its neutral obligations. He maintains that from a legal point of view there can be no such thing as the "imperfect neutrality" recognized by Vattel and Wheaton, a neutrality capable of being modified by anterior engagements binding the neutral to one of the belligerents. His solution is that these

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cessions of naval or coaling stations, in order to have a definite legal status, should be made in perpetuity and without reserve of sovereignty. But the difficulty here is that it is unlikely that cessions of this form could be obtained except from an overawed weaker power.

Unquestionably a very delicate situation would have been created between Japan and China at the close of the Russo-Japanese war, if China had refused to agree to the transfer of the lease of Port Arthur from Russia to Japan. It is true that the forms of a request were observed, Russia obtaining the consent of China to the transfer and Japan later validating it by a treaty with China. But China was in no position to assert herself, however much she may have been an unwilling party to the transaction by which her aggressive neighbor obtained a footing upon her soil.

On the question as to the extent to which a neutral, in exercising its right of granting asylum, may furnish the belligerent with supplies of coal, the interests of the great powers are in conflict. England with its large colonial possessions and numerous coaling stations has been the chief advocate of the policy of strictly limited provisioning; and the United States, as a permanently neutral power, has stood for a like enlargement of neutral immunities. On the other hand, France, with fewer distant colonies, has followed a policy of impartial liberality, and her attitude towards the Baltic fleet on its way to Port Arthur was in sharp contrast with the refusal of England, by the Declaration of Malta, to allow coaling at her ports. The compromise reached by the second Hague Conference was a distinct gain for the adherents of the stricter policy. Articles 19 and 20 of the convention concerning the rights and duties of neutral powers in naval war restate the two English rules of "nearest home port" and "three months interval" announced in the Instructions of January 31, 1862. M. Pilidi admits that they offer a fairly precise standard by which the neutrality of a nation may be judged; but the inconsistencies to be found in them suggest that their acceptance can only be temporary. No provision is made in article 19 as to the destination of belligerent vessels when once they have shipped "sufficient fuel to reach the nearest port of their own country;" nor in article 20 is there anything to prevent a whole fleet from recoaling at a single station, so as to constitute the port a base of operations for the belligerent if war were being carried on in the vicinity.

As with regard to the right of recoaling in neutral ports so on the question of considering coal as contraband, we find the great powers lining up according to their individual interests. France has regularly ex-

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cluded coal from her list of contraband, as did Spain in 1898. On the other hand England has consistently since the Crimean war classed coal as relative contraband, a rule to which the United States adhered in her war with Spain, and Japan in the war with Russia. Contrary to all established practice Russia took the novel position, by the imperial order of February 4, 1903, of holding coal to be absolute contraband irrespective of its destination. When the subject of contraband came up before the second Hague conference it was found impossible to reach an agreement as to what should be included in conditional contraband, and the question was left to be decided by the London naval conference. In the declaration of February 26, 1909, article 24 includes coal in the list of conditional contraband.

M. Pilidi has given us a very careful piece of work, and if his conclusions seem at times a defense of French policies, he admits very frankly that an accord can hardly be expected where the interests of the powers are so diverse.

C. G. FENWICK.

Roman Law in Mediæval Europe. By PAUL VINOGRADOFF. (London and New York: Harper & Brothers. 1909. Pp. ix, 135.)

This admirable little volume is in every respect worthy of its author's reputation. Based upon lectures "delivered in the spring of 1909 as an advanced historical course on the invitation of the University of London," it exhibits in compact and readable form the results of a surprising amount of research in a field which has been too long neglected by English and American scholars. The materials for the work are drawn principally from the mediæval law writings and the German commentaries thereon. Owing to certain historical and special reasons, the general subject of the present work has been exhaustively studied in Germany; but so little attention have English speaking scholars devoted to it that, as Prof. Vinogradoff points out, there is in English no other account of the mediæval life of the Roman law similar in scope to the one here presented.

The work is in five chapters, or "lectures." The first begins at the period of the Western Empire's last struggles with the barbarians—a period characterized by the romanization of the provinces and the barbarization of Rome. The presence within its borders of vast numbers

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of aliens caused the empire to recognize the legal customs of the various tribes, thus planting the germ of the later principle that a man should be held primarily responsible to his own personal law. A second result was the debasement of the Roman law in the provinces, as evidenced by a comparison of Justinian's code with the Breviarium Alaricianum, and especially with the Lex Romana Curiensis, the two principal statements of the barbarized Roman law prepared in the fifth and sixth centuries. On the other hand, even after the barbarian invasions, the Roman inhabitants were still governed in large part by their own law; and in various ways the influence of the Roman law permeated the proper domain of the barbarian laws as well. Moreover, our author adduces reasons for believing that there was a constant, though scanty, "stream of jurisprudence," in the sense of theoretical study, running through the period, which took the form principally of abstracts and glosses.

Lecture Two treats of the revival of jurisprudence—the spontaneous awakening of theory and learning in the field of law—which took place about the 11th century. At least four important centres of legal learning should be noticed: Provence, the cities of Lombardy (especially Pavia), Ravenna, and the famous school at Bologna which became the leading university of the middle ages. The method of legal study at this time was scholastic or dialectic. Great efforts were expended upon the restoration and literal interpretation (through the medium of glosses) of the text of the *corpus juris*. But these processes were subordinated to dialectical analyses of texts, whereby these were shown to support one another or to contain gaps and contradictions. In this particular the school at Bologna attained a high excellence. So the scholastic theorists, although they "framed their definitions and distinctions in too rigid a manner, yet they helped materially to disentangle the general conceptions of law from the chaotic uncertainty of a blind struggle for existence."

In France (Lecture Three) there was a revival of civilization and learning contemporaneous with that taking place in Italy. The scholastic movement was nowhere more powerful than in the university of Paris. The most interesting of the many products of French legal studies during the period of the formation of the school at Bologna is the recently discovered "Lo Codi" (about 1149), a summary of Justinian's code compiled for the use of the judges of Provence and composed in that language—the first compilation of Roman law in a vernacular tongue. In Provence, of course, the Roman law was recognized as the principal legal authority. But its influence permeated as well the regions governed

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by customary law derived largely from Germanic traditions. This resulted from the increasing knowledge of the Roman law, and the consequent struggle for existence between the rules and institutions of the two systems. The reign of St. Louis was very conspicuous for the progress of legal institutions, attributable to the growth of royal authority and the diligent study of the law; and in the productions of this period the influence of the Roman law is easily traceable. The extent and manner of the reception of the Roman law in the regions of the native customary law is well shown in the "Coutoume de Beauvaisis," compiled by Philippe de Remi, Sire de Beaumanoir, between 1279 and 1283, of which the author gives an interesting review.

Turning now to England (Lecture Four) we find that the civil law of Rome exercised a potent influence on the formation of the common law during the critical 12th and 13th centuries. Though never a constituent element of the latter system, and though opposed in its spread by church and state, its teaching in the English universities persisted, and exercised a considerable, though indirect influence upon the practice of the common law. The most important English contribution to Romanesque jurisprudence is contained in the work of Bracton. Though he modeled his work in part after that of the great Bolognese doctor Azo, Bracton's aim and method were quite different. Azo was distinctively an expositor of the Roman law, which he did not attempt to modify. Bracton, however, sought to build up institutes for the English law of his time with the help of Roman materials. His introduction, drawn chiefly from Azo, was undoubtedly intended to "strengthen native legal doctrines by the infusion of legal conceptions of a high order drawn from the fountain head of civilized and scientific laws." The author proceeds to fortify this view by numerous citations showing certain differences between the teachings of Azo and of Bracton, the manner in which the latter adopted and modified Roman ideas to suit local requirements, and particulars in which Roman conceptions have left distinct traces upon the English law. "The only real test of its (the Roman influence's) character," our author concludes, "is afforded by the development of juridical ideas, and in this respect the initial influence of Roman teaching on English doctrines will be found considerable."

The primary reason for the "reception" of the Roman law in Germany in the 15th century (Lecture Five) is found in the excessive particularism characterizing German political and legal institutions of the period. The division of sovereignty among so many units, the varied laws of social status, the division between lay and ecclesiastical courts, the prac-

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tice of settling cases by unwritten law "found" by the assessor's—all these contributed to the confusion and lack of unity characterizing the German law of the middle ages. Several interesting attempts were made to remedy this condition by expedients of native origin, such as appeals to superior courts, and various authoritative and popular treatises upon customary law and procedure. These works were strongly impregnated by the influence of Roman law, attributable largely to the growing knowledge of that system. The principal medium of the application of Roman law in the earlier stages of the reception took the form of juridical consultations and awards, whereby administrative and legal problems were referred to learned jurists, especially to the doctors of law in the universities, who applied Roman doctrines in the settlement of the cases. The results of this reception, occasioned by the reasons above mentioned, were reaped principally in the 16th century. Courts administering German law were overwhelmed by tribunals following Roman doctrines, primarily in consequence of the organization (in 1495) of the "Reichskammergericht," which deliberately adopted the Roman law as the common law of the empire and threw its weight on the side of the reception— an example followed by the high courts of the various principalities. Although mainly a movement of the upper classes, the reception encountered less opposition from the lower orders of the people than might have been expected. The fundamental incongruity of the attempt to amalgamate the two systems of law was not perceived until much later, when the native law was resuscitated from oblivion and contempt.

The study closes with the following apt generalization: "Altogether, the history of the Roman law in the middle ages testifies to the vigor and organizing power of ideas in the midst of shifting surroundings."

J. Wallace Bryan.

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